

Exhibit 106

New York, NY

Page 1

C O N F I D E N T I A L

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

- - - - -x

In re: PHARMACEUTICAL INDUSTRY AVERAGE

WHOLESALE PRICE LITIGATION

- - - - -x

THIS DOCUMENT RELATES TO: MDL No. 1456

UNITED STATES OF AMERICA ex rel. Civil Action

VEN-A-CARE OF THE FLORIDA KEYS, No.01-12257-

INC., v. DEY, INC., et al., Civil PBS

Action No. 05-11084-PBS; and UNITED

STATES OF AMERICA ex rel. VEN-A-CARE

OF THE FLORIDA KEYS, INC., v.

BOEHRINGER INGELHEIM CORP., et al.,

Civil Action No. 07-10248-PBS

- - - - -x

(Cross-noticed captions on following pages.)

November 18, 2008

9:10 a.m.

Videotaped deposition of Thomson

PDR Inc., by KRISTEN MINNE

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

a7b5296c-c23a-4c12-8217-ee69325ea5b1

New York, NY

Page 2	Page 4
<p>1 IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI</p> <p>2 FIRST JUDICIAL DISTRICT</p> <p>3 ----- x</p> <p>4 THE STATE OF MISSISSIPPI, :</p> <p>5 Plaintiff, :</p> <p>6 vs. : Civil Action No.</p> <p>7 ABBOTT LABORATORIES, INC., : G2005-2021</p> <p>8 et al., :</p> <p>9 Defendants. :</p> <p>10 ----- x</p> <p>11</p> <p>12 UNITED STATES DISTRICT COURT</p> <p>13 FOR THE DISTRICT OF MASSACHUSETTS</p> <p>14 -----x</p> <p>15 IN RE: PHARMACEUTICAL : MDL NO. 1456</p> <p>16 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION</p> <p>17 PRICE LITIGATION : 01-CV-12257-PBS</p> <p>18 THIS DOCUMENT RELATES TO: : Hon. Patti B. Saris</p> <p>19 The City of New York, et al. :</p> <p>20 v. :</p> <p>21 Abbott Laboratories, et al. :</p> <p>22 -----x</p>	<p>1 IN THE CIRCUIT COURT OF</p> <p>2 THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY</p> <p>3 FLORIDA</p> <p>4 ----- x</p> <p>5 THE STATE OF FLORIDA :</p> <p>6 ex rel. :</p> <p>7 VEN-A-CARE OF THE FLORIDA KEYS, :</p> <p>8 INC., a Florida Corporation, by :</p> <p>9 and through its principal :</p> <p>10 officers and directors, ZACHARY :</p> <p>11 T. BENTLEY and T. MARK JONES, :</p> <p>12 Plaintiffs,:</p> <p>13 v. :</p> <p>14 BOEHRINGER INGELHEIM CORPORATION,;</p> <p>15 BOEHRINGER INGELHEIM :</p> <p>16 INTERNATIONAL, GmbH, a/k/a :Case No.</p> <p>17 BOEHRINGER INGELHEIM :98-3032A</p> <p>18 AUSLANDSBETEILGUNGS GmbH, :</p> <p>19 BOEHRINGER INGELHEIM :Judge</p> <p>20 PHARMACEUTICALS, INC.; C.H. :William L. Gary</p> <p>21 BOEHRINGER SOHN; DEY, INC., DEY, :</p> <p>22 LP; EMD PHARMACEUTICALS, INC., :</p>
Page 3	Page 5
<p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MASSACHUSETTS</p> <p>3 -----x</p> <p>4 IN RE: PHARMACEUTICAL : MDL NO. 1456</p> <p>5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION</p> <p>6 PRICE LITIGATION : 01-CV-12257-PBS</p> <p>7 THIS DOCUMENT RELATES TO: : Hon. Patti B. Saris</p> <p>8 The State of California, :</p> <p>9 ex rel. Ven-A-Care :</p> <p>10 v. :</p> <p>11 Abbott Laboratories, et al. :</p> <p>12 Case No. 03-cv-11226-PBS :</p> <p>13 -----x</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 LIPHA, S.A., MERCK, KGaA, MERCK- :</p> <p>2 LIPHA, S.A., SCHERING CORP.; :</p> <p>3 SCHERING-PLOUGH CORPORATION; :</p> <p>4 ROXANE LABORATORIES, INC., n/k/a :</p> <p>5 BOEHRINGER INGELHEIM ROXANE, INC.:</p> <p>6 and WARRICK PHARMACEUTICALS CORP.:</p> <p>7 :</p> <p>8 Defendants. :</p> <p>9 ----- x</p> <p>10 November 18, 2008</p> <p>11 9:10 a.m.</p> <p>12 Videotaped deposition of Thomson</p> <p>13 PDR Inc., by KRISTEN MINNE, taken by attorneys</p> <p>14 for United States of America, pursuant to</p> <p>15 notice, held at the offices of Saterlee Stephens</p> <p>16 Burke & Burke, 230 Park Avenue, New York, New</p> <p>17 York, before Helen Mitchell, a Shorthand</p> <p>18 Reporter and Notary Public.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

2 (Pages 2 to 5)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 6

1 APPEARANCES:
 2
 3 GEJAA T. GOBENA, ESQ.
 4 United States Department of Justice
 5 Civil Division
 6 Commercial Litigation - Fraud Section
 7 Attorney for United States of
 8 America
 9 601 D Street, NW
 10 PHB-9028/P.O. Box 261
 11 Washington, D.C. 20044
 12 Phone: (202)307-1088
 13 E-mail: gejaa.gobena@usdoj.gov
 14
 15
 16
 17
 18
 19
 20
 21
 22

Page 7

1 APPEARANCES (Cont'd.):
 2 SATERLEE STEPHENS BURKE & BURKE LLP
 3 Attorneys for Thomson PDR Inc.
 4 230 Park Avenue
 5 New York, New York 10169
 6 BY: THOMAS J. CAHILL, ESQ.
 7 Phone: (212)404-8716
 8 E-mail: tcahill@ssbb.com
 9 -and-
 10 JOAN L. ROSENSTOCK, ESQ.
 11 Phone: (212)818-9200
 12 E-mail: jrosenstock@ssbb.com
 13
 14 ANDERSON LLC
 15 Attorneys for Ven-A-Care of the
 16 Florida Keys
 17 208 West 14th Street, Suite 3-B
 18 Austin, Texas 78701
 19 BY: C. JARRETT ANDERSON, ESQ.
 20 Phone: (512)469-9191
 21 E-mail: jarrett@anderson-llc.com
 22

Page 8

1 APPEARANCES (Cont'd.):
 2 NICHOLAS N. PAUL, ESQ.
 3 Supervising Deputy Attorney General
 4 State of California Department of
 5 Justice
 6 Civil Prosecutions Unit
 7 Attorney for State of California
 8 P.O. Box 85266
 9 110 West A Street, #1100
 10 San Diego, California 92186
 11 Phone: (619)688-6099
 12 E-mail: nicholas.paul@doj.ca.gov
 13
 14 KIRBY McINERNEY LLP
 15 Attorneys for City of New York,
 16 various New York counties and
 17 State of Iowa
 18 101 College Street
 19 Dripping Springs, Texas 78620
 20 BY: JAMES P. CARROLL, JR., ESQ.
 21 Phone: (512)858-1800
 22 E-mail: jcarroll@kmlp.com

Page 9

1 APPEARANCES (Cont'd.):
 2
 3 DIANA SHUMANS, ESQ.
 4 Office of Attorney General
 5 State of Florida
 6 The Capitol PL-01
 7 Tallahassee, Florida 32399-1050
 8 Phone: (850)414-3300
 9 (Via telephone)
 10
 11 HOGAN & HARTSON LLP
 12 Attorneys for Bristol-Myers and
 13 Squibb
 14 875 Third Avenue
 15 New York, New York 10022
 16 BY: THOMAS J. SWEENEY, III, ESQ.
 17 Phone: (212)918-3523
 18 E-mail: tjsweeney@hhlaw.com
 19
 20
 21
 22

3 (Pages 6 to 9)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 10	Page 12
<p>1 A P P E A R A N C E S (Cont'd.):</p> <p>2</p> <p>3 HYMAN, PHELPS & McNAMARA, P.C.</p> <p>4 Attorneys for Watson</p> <p>5 Pharmaceuticals, Inc.</p> <p>6 700 Thirteenth Street, N.W.</p> <p>7 Suite 1200</p> <p>8 Washington, D.C. 20005</p> <p>9 BY: DOUGLAS B. FARQUHAR, ESQ.</p> <p>10 Phone: (202)737-5600</p> <p>11 E-mail: dfarquhar@hpm.com</p> <p>12</p> <p>13 KIRKLAND & ELLIS LLP</p> <p>14 Attorneys for Boehringer and</p> <p>15 Roxane</p> <p>16 200 East Randolph Drive</p> <p>17 Chicago, Illinois 60601</p> <p>18 BY: SETH A. GASTWIRTH, ESQ.</p> <p>19 Phone: (312)861-2464</p> <p>20 E-mail: sgastwirth@kirkland.com</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (Cont'd.):</p> <p>2</p> <p>3 JONES DAY</p> <p>4 Attorneys for Abbott Laboratories</p> <p>5 and TAP Pharmaceuticals</p> <p>6 222 East 41st Street</p> <p>7 New York, New York 10017-6702</p> <p>8 BY: TONI-ANN CITERA, ESQ.</p> <p>9 Phone: (212)326-8376</p> <p>10 E-mail: tcitera@jonesday.com</p> <p>11</p> <p>12 KIRKLAND & ELLIS LLP</p> <p>13 Attorneys for Teva Pharmaceuticals</p> <p>14 USA, Inc., Ivax Corporation,</p> <p>15 Ivax Pharmaceuticals, Inc. and</p> <p>16 Sicor Inc.</p> <p>17 655 Fifteenth Street, N.W.</p> <p>18 Washington, D.C. 20005</p> <p>19 BY: JASON PARISH, ESQ.</p> <p>20 Phone: (202)879-5066</p> <p>21 E-mail: jparish@kirkland.com</p> <p>22</p>
Page 11	Page 13
<p>1 A P P E A R A N C E S (Cont'd.):</p> <p>2</p> <p>3 KELLEY DRYE & WARREN LLP</p> <p>4 Attorneys for Dey, Inc., Dey,</p> <p>5 L.P., Dey, L.P., Inc. and</p> <p>6 Mylan, Inc.</p> <p>7 101 Park Avenue</p> <p>8 New York, New York 10178</p> <p>9 BY: MARISA A. LORENZO, ESQ.</p> <p>10 Phone: (212)808-7697</p> <p>11 E-mail: mlorenzo@kelleydrye.com</p> <p>12</p> <p>13 MORGAN, LEWIS & BOCKIUS LLP</p> <p>14 Attorneys for Pfizer, Inc. and</p> <p>15 Pharmacia Corp.</p> <p>16 1701 Market Street</p> <p>17 Philadelphia, Pennsylvania 19103</p> <p>18 BY: ABBY J. KAPLAN, ESQ.</p> <p>19 Phone: (215)963-5834</p> <p>20 E-mail: akaplan@morganlewis.com</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (Cont'd.):</p> <p>2</p> <p>3 DAVIS POLK & WARDWELL</p> <p>4 Attorneys for Astra Zeneca</p> <p>5 Pharmaceuticals LP</p> <p>6 450 Lexington Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: KRISTI PRINZO, ESQ.</p> <p>9 Phone: (212)450-4741</p> <p>10 E-mail: kristi.prinzo@dpw.com</p> <p>11</p> <p>12 WHITE & CASE LLP</p> <p>13 Attorneys for Sandoz Inc.</p> <p>14 and TAP Pharmaceuticals</p> <p>15 1155 Avenue of the Americas</p> <p>16 New York, New York 10036-2787</p> <p>17 BY: KARA PAGLIARULO, ESQ.</p> <p>18 Phone: (212)819-7593</p> <p>19 E-mail: kpagliarulo@whitecase.com</p> <p>20</p> <p>21</p> <p>22</p>

4 (Pages 10 to 13)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 14

1 A P P E A R A N C E S (Cont'd.):
 2
 3 LOCKE LORD BISSELL & LIDDELL LLP
 4 Attorneys for Schering Corp.,
 5 B. Braun Medical and
 6 Warrick Pharmaceutical
 7 2200 Ross Avenue - Suite 2200
 8 Dallas, Texas 75201
 9 BY: KARIN B. TORGERSON ESQ.
 10 Phone: (214)740-8725
 11 E-mail: ktorgerson@lockelord.com
 12
 13
 14 KAYE SCHOLER LLP
 15 Attorneys for Novartis
 16 Pharmaceuticals Corp.
 17 425 Park Avenue
 18 New York, New York 10022
 19 BY: SAMUEL LONERGAN, ESQ.
 20 Phone: (212)836-7591
 21 E-mail: slonerган@kayescholer.com
 22

Page 15

1 A P P E A R A N C E S (Cont'd.):
 2
 3 HUGHES, HUBBARD & REED LLP
 4 Attorneys for Merck & Co., Inc.
 5 1775 I Street, N.W.
 6 Washington, D.C. 20006-2401
 7 BY: ROBERT B. FUNKHOUSER, ESQ.
 8 Phone: (202)721-4780
 9 E-mail: funkhouѕ@hugheshubbard.com
 10 (Via telephone)
 11
 12 SONNENSCHN NATH & ROSENTHAL LLP
 13 Attorneys for Ethex Corporation
 14 2000 McKinney Avenue - Suite 1900
 15 Dallas, Texas 75201-1858
 16 BY: MARGARET D. HALL, ESQ.
 17 Phone: (214)259-0945
 18 E-mail: pdhall@Sonnenschein.com
 19 (Via telephone)
 20
 21
 22

Page 16

1 A P P E A R A N C E S (Cont'd.):
 2 DICKSTEIN SHAPIRO LLP
 3 Attorneys for Baxter
 4 Healthcare Corp.
 5 1825 I Street, N.W.
 6 Washington, D.C. 20006-5403
 7 BY: JASON D. WALLACH, ESQ.
 8 Phone: (202)420-2668
 9 E-mail: wallachj@
 10 dicksteinshapiro.com
 11 (Via telephone)
 12
 13 DORNBUSH SCHAEFFER STRONGIN
 14 & VENAGLIA, LLP
 15 Attorneys for Forest Pharmaceuticals
 16 BY: CYNTHIA L. EBBS, ESQ.
 17 Phone: (212) 759-3300
 18 E-mail: ebbs@dssvlaw.com
 19 (via telephone)
 20
 21 ALSO PRESENT:
 22 MARK BRADY - Videographer

Page 17

1 I N D E X
 2 WITNESS EXAMINATION BY PAGE
 3 KRISTEN MINNE Mr. Gobena 34
 4 Mr. Anderson 129
 5 Mr. Carroll 232
 6 Mr. Paul 329
 7 Mr. Farquhar 337
 8
 9 E X H I B I T S
 10 FOR IDENTIFICATION PAGE
 11 Exhibit Minne 001 August 5, 2008 subpoena 46
 12 and notice of deposition
 13 with attachments
 14 Exhibit Minne 002 Revised notice of 46
 15 deposition
 16 Exhibit Minne 003 Second revised notice of 46
 17 deposition
 18 Exhibit Minne 004 Excerpts from 1990 Red 59
 19 Book
 20 Exhibit Minne 005 Excerpts from 1996 Red 72
 21 Book
 22

5 (Pages 14 to 17)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 18		Page 20	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 006 Document bearing Bates 83	4	Exhibit Minne 019 Document dated July 29, 188
5	Nos. HHD 812-006 through	5	2003
6	812-009	6	Exhibit Minne 020 Document describing 193
7	Exhibit Minne 007 Document bearing Bates 94	7	electronic file of Red
8	Nos. Red Book 06983	8	Book
9	Exhibit Minne 008 October 2000 product 103	9	Exhibit Minne 021 Revision to AWP policy 195
10	listing verification for	10	Exhibit Minne 022 Document bearing Bates 196
11	Roxane Laboratories	11	Nos. Red Book 00595
12	Exhibit Minne 009 Price listing 110	12	through 600
13	verification for Abbott	13	Exhibit Minne 023 October 2000 206
14	Hospital Products, the	14	verification forms for
15	first page bearing Bates	15	Abbott Pharmaceuticals
16	No. Red Book 01172	16	Exhibit Minne 024 Document with first page 208
17	Exhibit Minne 010 Excerpts from 2001 and 116	17	entitled "Abbott
18	2002 Red Books	18	Pharmaceutical Markup
19	Exhibit Minne 011 Document bearing Bates 132	19	History"
20	Nos. TH 0598 through	20	
21	0601	21	
22		22	
Page 19		Page 21	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 012 Document bearing Bates 138	4	Exhibit Minne 025 January 1, 1995 through 212
5	Nos. TH 0256 through	5	September 18, 2003
6	0262	6	records of Roxane
7	Exhibit Minne 013 Document bearing Bates 143	7	pricing/markup history
8	No. RGX 0189707	8	Exhibit Minne 026 Form letter to 218
9	Exhibit Minne 014 Document bearing Bates 153	9	Abbott/Ross Data Vendor
10	Nos. RGX 0189708 through	10	Exhibit Minne 027 Price change 221
11	0189712	11	notification sent to Red
12	Exhibit Minne 015 Document bearing Bates 161	12	Book by Abbott
13	Nos. TH 353	13	Exhibit Minne 028 Documentation for Abbott 223
14	Exhibit Minne 016 PowerPoint presentation 168	14	Pharmaceuticals
15	entitled "Micromedex AQP	15	verification form
16	analysis, October 15th,	16	Exhibit Minne 029 1995 price change 227
17	2002"	17	notification by Abbott
18	Exhibit Minne 017 Document bearing Bates 184	18	Pharmaceuticals
19	No. TH 463	19	Exhibit Minne 030 1999 price change 228
20	Exhibit Minne 018 Document bearing Bates 187	20	notification by Abbott
21	Nos. TH269 through 280	21	Pharmaceuticals
22		22	

6 (Pages 18 to 21)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 22		Page 24	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 031 Previously used format 229	4	Exhibit Minne 042 September 18, 2001 258
5	of Red Book product	5	Bedford Laboratories
6	verification list	6	product listing
7	Exhibit Minne 032 Document bearing Bates 232	7	verification
8	Nos. Red Book 04693 and	8	Exhibit Minne 043 October 1, 2001 Barr 260
9	04694	9	Laboratories product
10	Exhibit Minne 033 July 6, 2004 Bayer 237	10	listing verification
11	Corporation product	11	Exhibit Minne 044 October 2, 2001 Merck & 262
12	listing verification	12	Company product listing
13	Exhibit Minne 034 Document bearing Bates 240	13	verification
14	Nos. Red Book 07589	14	Exhibit Minne 045 Document bearing Bates 266
15	through 07597	15	No. Red Book 09936
16	Exhibit Minne 035 July 6, 2004 Ethex 232	16	Exhibit Minne 046 Document bearing Bates 269
17	Corporation product	17	Nos. Red Book 14957
18	listing verification	18	through 14961
19	Exhibit Minne 036 October 11, 2002 Forest 245	19	Exhibit Minne 047 Document bearing Bates 271
20	Pharmaceuticals product	20	Nos. Red Book 13418
21	listing verification	21	through 13426
22		22	
Page 23		Page 25	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 037 July 25, 2003 Fujisawa 247	4	Exhibit Minne 048 July 25h, 2003 Pfizer 274
5	Healthcare product	5	USA Pharma Group product
6	listing verification	6	listing verification
7	Exhibit Minne 038 July 6, 2004 Eli Lilly & 249	7	Exhibit Minne 049 July 25, 2003 276
8	Company product listing	8	Greenstone product
9	verification	9	listing verification
10	Exhibit Minne 039 October 1, 2001 251	10	Exhibit Minne 050 October 11, 2002 278
11	Glaxo-Wellcome product	11	Pharmacia Corporation
12	listing verification	12	product listing
13	Exhibit Minne 040 August 16, 2001 Roche 253	13	verification
14	Laboratories product	14	Exhibit Minne 051 Document bearing Bates 280
15	listing verification	15	Nos. Red Book 13003 and
16	Exhibit Minne 041 Boehringer Ingelheim 255	16	13002
17	Pharmaceuticals product	17	Exhibit Minne 052 Document bearing Bates 280
18	listing verification	18	Nos. Red Book 13199 and
19	signed August 22, 2002	19	13200
20		20	Exhibit Minne 053 Document bearing Bates 280
21		21	Nos. Red Book 13198 and
22		22	13197

7 (Pages 22 to 25)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 26		Page 28	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 054 Document bearing Bates 280	4	Exhibit Minne 067 July 25, 2003 Par 303
5	No. Red Book 13196	5	Pharmaceuticals product
6	Exhibit Minne 055 Document bearing Bates 281	6	listing verification
7	No. Red Book 13015	7	Exhibit Minne 068 December 6, 2005 Amgen 305
8	Exhibit Minne 056 Document bearing Bates 281	8	USA product listing
9	Nos. Red Book 13109	9	verification
10	through 13113	10	Exhibit Minne 069 Document bearing Bates 308
11	Exhibit Minne 057 Document bearing Bates 281	11	Nos. Red Book 02938
12	Nos. Red Book 13090 and	12	through 02962
13	13091	13	Exhibit Minne 070 Document bearing Bates 310
14	Exhibit Minne 058 Document bearing Bates 281	14	Nos. Red Book 01802
15	No. Red Book 13086	15	through 1805
16	Exhibit Minne 059 Document bearing Bates 281	16	Exhibit Minne 071 Document bearing Bates 312
17	No. Red Book 13087	17	Nos. Red Book 13581
18	Exhibit Minne 060 September 26, 1997 283	18	through 13593
19	Schering Corporation	19	Exhibit Minne 072 Document bearing Bates 314
20	product listing	20	Nos. Red Book 02073
21	verification	21	through 02095
22		22	
Page 27		Page 29	
1	EXHIBITS	1	EXHIBITS
2	(Continued)	2	(Continued)
3	FOR IDENTIFICATION PAGE	3	FOR IDENTIFICATION PAGE
4	Exhibit Minne 061 October 27, 2000 Warrick 286	4	Exhibit Minne 073 Document bearing Bates 317
5	Pharmaceuticals product	5	Nos. Red Book 10863,
6	listing verification	6	10868, 10876, 10877,
7	Exhibit Minne 062 October 2, 2001 TAP 289	7	10878
8	Pharmaceuticals product	8	Exhibit Minne 074 Document bearing Bates 320
9	listing verification	9	Nos. Red Book 11421,
10	Exhibit Minne 063 September 24, 1999 King 291	10	11432, 11436, 11439
11	Pharmaceuticals product	11	Exhibit Minne 075 Document bearing Bates 323
12	listing verification	12	Nos. Red Book 15827,
13	Exhibit Minne 064 July 25, 2003 Monarch 293	13	15838, 15839, 15841
14	Pharmaceuticals product	14	Exhibit Minne 076 Document bearing Bates 325
15	listing verification	15	Nos. Red Book 09294,
16	Exhibit Minne 065 Document bearing Bates 298	16	09302, 09306, 09329
17	Nos. Red Book 11649	17	Exhibit Minne 077 Document bearing Bates 329
18	through 11673	18	Nos. California Mylan
19	Exhibit Minne 066 October 24, 2001 ESI 301	19	03471964 through
20	Lederle product listing	20	03472033
21	verification	21	Exhibit Minne 078 Document bearing Bates 340
22		22	No. WATMA 005202

8 (Pages 26 to 29)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 30	Page 32
<p>1 EXHIBITS</p> <p>2 (Continued)</p> <p>3 FOR IDENTIFICATION PAGE</p> <p>4 Exhibit Minne 079 Document bearing Bates 342</p> <p>5 Nos. RB00803 through</p> <p>6 00874</p> <p>7 Exhibit Minne 080 Document bearing Bates 346</p> <p>8 No. WATED 021725</p> <p>9 Exhibit Minne 081 August 30, 2000 letter 353</p> <p>10 from Watson Pharma</p> <p>11 Incorporated to Linda</p> <p>12 Panke, with attachment</p> <p>13</p> <p>14 REQUEST FOR PRODUCTION</p> <p>15 PAGE LINE</p> <p>16 350 9</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 THE VIDEOGRAPHER: We're on the</p> <p>2 record.</p> <p>3 The time is 9:10 on November 18th,</p> <p>4 2008. This is the case of the U.S. District</p> <p>5 Court for the District of Massachusetts, and the</p> <p>6 case is In Re: Pharmaceutical Industry Average</p> <p>7 Wholesale Price Litigation, and the case numbers</p> <p>8 are MDL 1456 and CV 01-12257-PBS. And today's</p> <p>9 witness is Kris -- Kristin Minne.</p> <p>10 At this time counsel will identify</p> <p>11 themselves.</p> <p>12 MR. GOBENA: Gejaa Gobena, United</p> <p>13 States Department of Justice, on behalf of the</p> <p>14 United States.</p> <p>15 MR. CAHILL: I'm Thomas Cahill, from</p> <p>16 Satterlee Stephens. We represent the corporate</p> <p>17 witness here today.</p> <p>18 MS. ROSENSTOCK: Joan Rosenstock,</p> <p>19 Satterlee Stephens, also representing the</p> <p>20 corporate witness.</p> <p>21 MR. GASTWIRTH: Seth Gastwirth, from</p> <p>22 Kirkland & Ellis, representing Roxane and</p>
Page 31	Page 33
<p>1 STIPULATIONS</p> <p>2</p> <p>3 IT IS HEREBY STIPULATED AND AGREED</p> <p>4 by and among counsel for the respective</p> <p>5 parties hereto, that the filing, sealing</p> <p>6 and certification of the within</p> <p>7 deposition shall be and the same are</p> <p>8 hereby waived;</p> <p>9 IT IS FURTHER STIPULATED AND</p> <p>10 AGREED that all objections, except as to</p> <p>11 the form of the question, shall be</p> <p>12 reserved to the time of the trial.</p> <p>13 IT IS FURTHER STIPULATED AND</p> <p>14 AGREED that the within deposition may be</p> <p>15 signed and sworn to before any officer</p> <p>16 authorized to administer an oath with</p> <p>17 the same force and effect as if signed</p> <p>18 and sworn to before the Court.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 Boehringer defendants.</p> <p>2 MS. LORENZO: Marisa Lorenzo, from</p> <p>3 Kelley Drye & Warren, representing the Dey</p> <p>4 defendants and Mylan Incorporated.</p> <p>5 MR. SWEENEY: Tom Sweeney, from Hogan &</p> <p>6 Hartson, representing Bristol-Myers Squibb.</p> <p>7 MS. KAPLAN: Good morning, I'm Abby</p> <p>8 Kaplan from Morgan Lewis, representing Pfizer and</p> <p>9 Pharmacia.</p> <p>10 MR. LONERGAN: Sam Lonergan, with Kaye</p> <p>11 Scholer, Novartis Pharmaceuticals Corporation.</p> <p>12 MS. TORGERSON: Karin Torgerson, with</p> <p>13 Locke Lord Bissell & Liddell, for Warrick,</p> <p>14 Schering and B. Braun.</p> <p>15 MS. CITERA: Toni-Ann Citera, from</p> <p>16 Jones Day, representing Abbott Laboratories and</p> <p>17 TAP Pharmaceutical.</p> <p>18 MR. PAUL: Nicholas Paul, the</p> <p>19 California Department of Justice, for California.</p> <p>20 MR. CARROLL: James Carroll, Kirby</p> <p>21 McInerney, on behalf of the City of New York and</p> <p>22 various New York counties and the State of Iowa.</p>

9 (Pages 30 to 33)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 34	Page 36
<p>1 MR. ANDERSON: Jarrett Anderson, 2 counsel for Ven-A-Care. 3 MR. PARISH: Jason Parish, Kirkland & 4 Ellis, for Teva, Ivax and Sisor. 5 MS. PAGLIARULO: Kara Pagliarulo, of 6 White & Case, representing Sandoz Inc. 7 THE VIDEOGRAPHER: At this time I'll 8 have the court reporter swear in the witness. 9 We didn't identify the person on the 10 phone. 11 THE COURT REPORTER: Miss Hall, could 12 you please state your appearance for the record? 13 MS. HALL: Sure. It's Peg Hall, with 14 Sonnenschein Nath & Rosenthal, for Ethex 15 Corporation. 16 KRISTEN MINNE, having been 17 first duly sworn by the Notary Public (Helen 18 Mitchell), was examined and testified as follows: 19 EXAMINATION 20 BY MR. GOBENA: 21 Q. Good morning, Miss Minne. 22 A. Good morning.</p>	<p>1 Q. Let me go over a couple of ground 2 rules. 3 It's relatively a straightforward 4 process, but there's a few things you probably 5 should keep in mind, one of which is that we have 6 a court reporter here who's taking down all your 7 testimony. And it's important that we do two 8 things: One is to give sort of affirmative 9 verbal answers to questions. Head nods don't 10 come across on the transcript, "uh-huh" is a very 11 ambiguous term, so if you could sort of state 12 something affirmatively, that would be helpful to 13 the court reporter and all of us who are going to 14 be looking at this transcript down the road. 15 Another thing is we should both try not 16 to talk each over other. It's a tendency people 17 have to anticipate where a question's going and 18 wanting to answer it quickly, and -- and 19 sometimes there's a tendency on the part of the 20 questioner to interrupt the witness, and so we'll 21 both try and hopefully work on that so we don't 22 talk over each other and garble up the</p>
Page 35	Page 37
<p>1 Q. As I mentioned earlier, my name's 2 Gejaa Gobena, I'm an attorney with the Department 3 of Justice. And you're here this morning in a 4 connection of variety of cases, one of which -- 5 or three of which actually being cases involving 6 the United States having sued several 7 pharmaceutical companies, and you've been also 8 presented here as a 30(b)(6) witness or designee 9 on behalf of Thomson. 10 You understand that; correct? 11 A. Yes, I do. 12 Q. Have you ever been deposed before? 13 A. No, I have not. 14 MR. CAHILL: Mr. Gobena, if I can just 15 state for the record, as we'd discussed before, 16 that we'd like to deem the transcript of this 17 deposition confidential to the extent provided 18 for in the governing protective order in the 19 case. 20 MR. GOBENA: Understood. 21 Q. So you have not been deposed before? 22 A. No.</p>	<p>1 transcript. 2 And then the other thing to keep in 3 mind is that from time to time you'll hear 4 various objections, either lodged by your counsel 5 or by various other parties in the room today. 6 Unless you're instructed by your counsel not to 7 answer the question, you're supposed to answer 8 the question. So just keep that in mind as we're 9 going through the deposition today. 10 First of all, why don't you again state 11 your name for the record for us. 12 A. My name is Kristen Minne. 13 Q. And Miss Minne, where are you 14 employed? 15 A. I'm employed at Thomson Reuters. 16 Q. And how long have you been employed at 17 Thomson Reuters? 18 A. Since 1997. 19 Q. And what's your current job title? 20 A. My current job title is senior 21 manager. 22 Q. What are your job responsibilities?</p>

10 (Pages 34 to 37)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 38</p> <p>1 A. I oversee the day-to-day operations of</p> <p>2 the editorial department at Thomson Reuters, the</p> <p>3 healthcare division of Thomson Reuters.</p> <p>4 MR. GOBENA: Did someone just join the</p> <p>5 call?</p> <p>6 If you have, if you could identify</p> <p>7 yourself for the record, that would be great.</p> <p>8 Miss Hall, are you still there?</p> <p>9 MS. HALL: Yes, I am.</p> <p>10 MR. GOBENA: There's no one else.</p> <p>11 Q. Sorry. So you're now -- you're a</p> <p>12 senior manager overseeing the editorial</p> <p>13 department of the healthcare division of Thomson</p> <p>14 Reuters; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And what publications are you</p> <p>17 responsible for overseeing?</p> <p>18 A. Currently I'm overseeing the drug</p> <p>19 decs, drug points, drug consults publications, so</p> <p>20 basically the drug information.</p> <p>21 Q. And how long have you been a senior</p> <p>22 manager overseeing these particular publications</p>	<p style="text-align: right;">Page 40</p> <p>1 the Red Book content.</p> <p>2 Q. What's the difference between being</p> <p>3 the manager of integrated content versus being</p> <p>4 manager for the Red Book database?</p> <p>5 A. The integrated content is the content</p> <p>6 that's used for screening, for DUR screening in a</p> <p>7 pharmacy system, such as drug interactions, drug</p> <p>8 allergy screening.</p> <p>9 Q. So it's clinical information?</p> <p>10 A. Yes, clinical information.</p> <p>11 Q. And in your position in 2002 to 2004</p> <p>12 as the manager for the Red Book database, were</p> <p>13 you not involved in the collection or publication</p> <p>14 of clinical information?</p> <p>15 A. No, I was only involved in the</p> <p>16 collection of the information for the Red Book.</p> <p>17 Q. And the Red Book -- what kind of</p> <p>18 information is published in the Red Book, just</p> <p>19 generally?</p> <p>20 A. Generally, NDCs, you know, drug names,</p> <p>21 manufacturer names, prices, package sizes.</p> <p>22 Q. Prices?</p>
<p style="text-align: right;">Page 39</p> <p>1 at Thomson Reuters?</p> <p>2 A. Since April of this year.</p> <p>3 Q. And before April of this year, what</p> <p>4 was your job title?</p> <p>5 A. Prior to April of this year, my job</p> <p>6 title was manager of the Red Book database.</p> <p>7 Q. And what did your job responsibilities</p> <p>8 entail as the manager of the Red Book database?</p> <p>9 A. I oversaw the staff that was in charge</p> <p>10 of collecting the information for Red Book, as</p> <p>11 well as inputting the information for the Red</p> <p>12 Book.</p> <p>13 Q. And how long did you hold that title</p> <p>14 as the manager of the Red Book database?</p> <p>15 A. I had that title from 2002 until 2004,</p> <p>16 and then again from 2006 to -- until April of</p> <p>17 this year.</p> <p>18 Q. What did you do in that two-year gap</p> <p>19 between 2004 and 2006?</p> <p>20 A. I was still a manager over what we</p> <p>21 call the integrated content. So I did not at</p> <p>22 that time have direct responsibility for any of</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Prices, yes. Physical characteristics</p> <p>2 of that product, therapeutic classifications of</p> <p>3 that product.</p> <p>4 Q. So there's a separation -- in other</p> <p>5 words, Red Book doesn't really publish</p> <p>6 clinical-type information; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. We'll get into a little bit more</p> <p>9 detail about what is published in the Red Book</p> <p>10 over the course of the day.</p> <p>11 And prior to 2002, when you became the</p> <p>12 manager for sort of those two different times of</p> <p>13 the Red Book database, what were your job</p> <p>14 responsibilities at Thomson?</p> <p>15 A. From 2000 to 2002 I was a manager,</p> <p>16 again over the -- what I call the integrated</p> <p>17 content, the clinical content. And from my start</p> <p>18 of my employment in '97 until the year 2000, when</p> <p>19 I became a manager, I was what we call an</p> <p>20 individual contributor. My job title was</p> <p>21 actually an editor, and I wrote the clinical</p> <p>22 information.</p>

11 (Pages 38 to 41)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 42</p> <p>1 Q. I want to ask you, what did you do to 2 prepare for your testimony today? Did you review 3 any documents, talk to any people? What did you 4 do? 5 A. I reviewed documents that have been 6 made available for this deposition, and met with 7 Tom yesterday. 8 Q. And I'm not interested in your 9 conversations with Mr. Cahill, but did you have 10 any conversations with people other than counsel 11 in preparation for this deposition today? 12 A. I had some conversations with people 13 back at the Thomson Reuters office, in the legal 14 department, regarding this deposition. 15 Q. So these were lawyers? 16 A. Correct. 17 Q. You didn't talk to any non-lawyers at 18 Thomson to help you prepare for your deposition 19 today? 20 A. No, I did not. 21 Q. You mentioned that you reviewed some 22 documents. Do you recall generally what types of</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. GOBENA: Right, understood. 2 MR. CAHILL: -- so she wouldn't have 3 reviewed those, and Thomson's also produced 4 documents that relate to certain particular drugs 5 in certain particular litigations, and she 6 wouldn't have -- we wouldn't have made those 7 documents available, you know, as part of the 8 preparation as well. 9 MR. GOBENA: Understood. Okay, thank 10 you, Mr. Cahill, appreciate that. 11 Q. We'll go over specific documents, and 12 either you will have reviewed them or not have, 13 during the course of the deposition. 14 I'm going to start first by introducing 15 a few exhibits here. 16 MR. GOBENA: Unfortunately, I didn't 17 realize we were going to be this large a cast of 18 characters here so I don't have tons of copies 19 for everyone. I do have a couple extra copies 20 here. And the first three exhibits are going to 21 be the United States' notice of deposition and 22 the subpoena that we issued, and the other</p>
<p style="text-align: right;">Page 43</p> <p>1 documents you reviewed? 2 A. Generally documents on Red Book, page 3 matter, front matter, pricing sheets that we had 4 received from various manufacturers. 5 Q. Did you review any internal e-mails or 6 internal documents? 7 A. Yes, internal e-mails, internal 8 presentations. 9 MR. CAHILL: I should state for the 10 record that the materials she reviewed were 11 materials that were produced by Thomson in 12 connection with this litigation. 13 MR. GOBENA: Okay. 14 Q. Let me make it simpler, then. 15 Did you have a chance to review all the 16 materials that were produced by Thomson or was it 17 a selection of materials you reviewed? 18 MR. CAHILL: I would just clarify with 19 respect to materials produced by Thomson, 20 Thomson's produced hundreds of boxes of documents 21 because the manufacturer files were made 22 available --</p>	<p style="text-align: right;">Page 45</p> <p>1 exhibits are -- we're not really going to spend 2 much time on them but they're basically the 3 revised notices that set the new date for the 4 deposition, so -- I'd like to have the court 5 reporter mark this as -- 6 MR. CAHILL: And, Mr. Gobena, I should 7 interject, there is one additional document that 8 I believe that the witness reviewed in preparing 9 for the deposition that wasn't produced, and 10 that's the 1990 version of the Red Book, and 11 we've made copies with excerpts. 12 MR. GOBENA: Right. 13 MR. CAHILL: So I just note, maybe at a 14 break we can address that. 15 MR. GOBENA: Understood. Probably at 16 the first break, it makes sense to do it then. 17 And here is Exhibit 2. Exhibit 2 is 18 the revised notice of deposition, which was 19 issued subsequent to the first notice, and then 20 the third exhibit's just going to be the 21 subsequent revised notice, which is the operative 22 one in some respects that got us here today.</p>

12 (Pages 42 to 45)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 46	Page 48
<p>1 That's going to be Exhibit 3.</p> <p>2 (August 5, 2008 subpoena and notice of</p> <p>3 deposition with attachments marked Exhibit Minne</p> <p>4 001 for identification.)</p> <p>5 (Revised notice of deposition marked</p> <p>6 Exhibit Minne 002 for identification.)</p> <p>7 (Second revised notice of deposition</p> <p>8 marked Exhibit Minne 003 for identification.)</p> <p>9 Q. Miss Minne, I'm going to ask you to</p> <p>10 sort of quickly look through them and see if you</p> <p>11 recognize the documents that are before you.</p> <p>12 A. I have seen Exhibit 1.</p> <p>13 Q. Actually, we're going to focus on</p> <p>14 Exhibit 1 anyway, so why don't you hold off on</p> <p>15 looking at the other two right now.</p> <p>16 I want to turn your attention -- and</p> <p>17 Exhibit 1, of course, is the original notice that</p> <p>18 we issued here in the subpoena as well, and I'm</p> <p>19 going to spend most of my time right now on a</p> <p>20 couple of exhibits. It's Exhibit A and Exhibit B</p> <p>21 to the subpoena.</p> <p>22 I want to first direct your attention</p>	<p>1 one?</p> <p>2 A. I performed a search of both my</p> <p>3 printed files and e-mail records, looking for</p> <p>4 information related to this deposition.</p> <p>5 Q. Let's spend a little time on this</p> <p>6 topic.</p> <p>7 Do you know -- you mentioned what you</p> <p>8 just did. Were other people involved in the</p> <p>9 search and collection efforts in response to the</p> <p>10 August 5th subpoena?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know who was involved in the</p> <p>13 search?</p> <p>14 A. I asked the existing manager of the</p> <p>15 Red Book database to also search for any</p> <p>16 information she might have.</p> <p>17 Q. And who was the existing manager of</p> <p>18 the Red Book database?</p> <p>19 A. Her name is Deborah Siegfried.</p> <p>20 Q. And does Miss Siegfried report to you</p> <p>21 as --</p> <p>22 A. She does not now. She did in the</p>
Page 47	Page 49
<p>1 to Exhibit A. Have you reviewed Exhibit A to the</p> <p>2 August 5th, 2008 subpoena issued by the United</p> <p>3 States?</p> <p>4 A. I have reviewed it, yes.</p> <p>5 Q. And you'll see there that there are</p> <p>6 seven areas of inquiry identified.</p> <p>7 A. (Nodding)</p> <p>8 Q. Let's look at the first area of</p> <p>9 inquiry, which reads the area of inquiry is going</p> <p>10 to be "Thomson PDR Inc.'s search for and</p> <p>11 production of documents in response to the</p> <p>12 subpoena duces tecum issued on behalf of the</p> <p>13 plaintiff United States of America on or about</p> <p>14 August 5th, 2008."</p> <p>15 Miss Minne, are you prepared to testify</p> <p>16 about Thomson's PDR Inc.'s search and -- for and</p> <p>17 production of documents in response to the</p> <p>18 subpoena duces tecum issued by the United States</p> <p>19 on August 5th, 2008?</p> <p>20 A. Yes.</p> <p>21 Q. And what did you do to prepare</p> <p>22 yourself to testify on -- about the topic number</p>	<p>1 past.</p> <p>2 Q. At some point in your current position</p> <p>3 as senior manager did you have responsibility for</p> <p>4 the Red Book and then lose it? Or why does she</p> <p>5 no longer report to you?</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 MR. GOBENA: You could answer.</p> <p>8 A. We did a reorganization and she was</p> <p>9 moved under a different senior manager.</p> <p>10 MR. SWEENEY: Can we have a stipulation</p> <p>11 that if one defendant objects that would cover</p> <p>12 all defendants?</p> <p>13 MR. GOBENA: Yes.</p> <p>14 MR. SWEENEY: All plaintiffs' counsel</p> <p>15 agree to that?</p> <p>16 MR. ANDERSON: Yes.</p> <p>17 MR. CARROLL: Yes.</p> <p>18 Q. And under which senior manager -- you</p> <p>19 mentioned she's working for another senior</p> <p>20 manager. Which senior manager is she reporting</p> <p>21 to now?</p> <p>22 A. Her senior manager's name is Joanne</p>

13 (Pages 46 to 49)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 50	Page 52
<p>1 Brownhill.</p> <p>2 Q. And what are Miss Brownhill's</p> <p>3 responsibilities, to the extent you know?</p> <p>4 A. They are very similar to mine except</p> <p>5 that she oversees different content areas.</p> <p>6 Q. What's the different content areas</p> <p>7 that Miss Brownfeld --</p> <p>8 A. Brownhill.</p> <p>9 Q. -- that Miss Brownhill oversees?</p> <p>10 A. She oversees the toxicology content</p> <p>11 and the Red Book content now, as well as library</p> <p>12 services.</p> <p>13 Q. Would you just state one more time</p> <p>14 what content you oversee again?</p> <p>15 A. It is the drug information content.</p> <p>16 Q. Okay.</p> <p>17 So Miss Siegfried did a search. Were</p> <p>18 there any other people involved in searching and</p> <p>19 collecting documents in response to the August</p> <p>20 5th subpoena?</p> <p>21 A. I did not ask anyone else to. I -- it</p> <p>22 is my understanding that our legal department had</p>	<p>1 documentation.</p> <p>2 Q. So -- you mentioned e-mails. I want</p> <p>3 to go through this kind of systematically.</p> <p>4 Were there paper, hard copies of</p> <p>5 documents that were collected during the search</p> <p>6 and collection efforts in response to the</p> <p>7 subpoena?</p> <p>8 A. My understanding is yes.</p> <p>9 Q. Do you know whose paper documents were</p> <p>10 searched in order to respond to the August 5th</p> <p>11 subpoena?</p> <p>12 A. Lauri Moore, who was the director of</p> <p>13 drug information at the time, which was a manager</p> <p>14 of Red Book. And she is no longer employed at</p> <p>15 Thomson Reuters.</p> <p>16 Q. Do you know where she is -- she's</p> <p>17 currently employed?</p> <p>18 A. Yes.</p> <p>19 Q. And where is that?</p> <p>20 A. At MediSpan.</p> <p>21 Q. Small world.</p> <p>22 A. Yeah, it sure is.</p>
Page 51	Page 53
<p>1 other people searching as well.</p> <p>2 Q. But you don't know who those people</p> <p>3 are?</p> <p>4 A. No, I...</p> <p>5 Q. But it's your understanding that aside</p> <p>6 from you, folks in the legal department at</p> <p>7 Thomson Reuters had asked additional people to</p> <p>8 collect documents?</p> <p>9 A. Correct.</p> <p>10 Q. What do you base that understanding</p> <p>11 on? I want to be careful not to get into your</p> <p>12 privileged conversations, but if it involves you</p> <p>13 revealing privileged conversations, you don't</p> <p>14 have to answer it -- okay.</p> <p>15 A. (Nodding)</p> <p>16 Q. I take it by your nod that's how you</p> <p>17 found out?</p> <p>18 A. The reason I say I believe other</p> <p>19 people were searching is because I did see</p> <p>20 e-mails from people who are no longer employed at</p> <p>21 Thomson, so it is my assumption that the legal</p> <p>22 department somehow came up with that</p>	<p>1 Q. And other than Miss Moore's files, do</p> <p>2 you know of any other person's hard paper files</p> <p>3 that were searched?</p> <p>4 A. I do not know.</p> <p>5 Q. Did you look through your own paper</p> <p>6 files?</p> <p>7 A. Yes, I did.</p> <p>8 Q. How about, do you know whether Miss</p> <p>9 Siegfried's, you know, paper hard copy files were</p> <p>10 searched as well?</p> <p>11 A. I asked her to search them. I can</p> <p>12 only assume she did.</p> <p>13 Q. But other than the people we've</p> <p>14 discussed, you don't have any knowledge of other</p> <p>15 people's hard copy files that were searched?</p> <p>16 A. No, I don't.</p> <p>17 Q. How about electronic files, do you</p> <p>18 know whether an electronic file search was</p> <p>19 conducted in response to the subpoena?</p> <p>20 A. I do not know. Again, it's my</p> <p>21 assumption that legal would have performed some</p> <p>22 type of electronic search for people who are no</p>

14 (Pages 50 to 53)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 54	Page 56
<p>1 longer there, but I don't have knowledge of that.</p> <p>2 Q. Were you asked personally to go</p> <p>3 through your e-mails and your computer hard drive</p> <p>4 to see if there were documents responsive to the</p> <p>5 August 5th subpoena?</p> <p>6 A. Not responsive to the August 5th</p> <p>7 subpoena.</p> <p>8 Q. So have you been asked previously to</p> <p>9 look at your e-mail and computer hard drive for</p> <p>10 documents responsive to a subpoena?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recall what that subpoena</p> <p>13 was?</p> <p>14 A. Um --</p> <p>15 MR. CAHILL: If you recall.</p> <p>16 A. It was when another Thomson employee</p> <p>17 came out here for a deposition.</p> <p>18 Q. Do you recall who that Thomson</p> <p>19 employee was?</p> <p>20 A. Gail Luka.</p> <p>21 Q. And she gave a deposition. Do you</p> <p>22 know in what case?</p>	<p>1 A. Yes, I am.</p> <p>2 Q. What did you do to prepare yourself to</p> <p>3 testify about this particular area of inquiry?</p> <p>4 A. I didn't do anything particular except</p> <p>5 that -- my years of tenure as manager over the</p> <p>6 content.</p> <p>7 Q. And during your years of tenure as a</p> <p>8 manager of the content of Red Book database, did</p> <p>9 you accumulate knowledge of what was done in</p> <p>10 terms of the publication of the Red Book prior to</p> <p>11 your tenure? In other words, this request asks</p> <p>12 for going back to 1990. Did you develop a</p> <p>13 historical knowledge based on your tenure?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Topic number three, "From January 1,</p> <p>16 1990 to the present, the business practices</p> <p>17 concerning the procedure or means used by Thomson</p> <p>18 PDR Inc. to solicit, gather, verify or confirm</p> <p>19 pricing information from manufacturers for use in</p> <p>20 determining the contents (including prices)</p> <p>21 published, whether by print or electronically, in</p> <p>22 Thomson PDR Inc.'s Red Book and Red Book Update</p>
Page 55	Page 57
<p>1 A. I do not know.</p> <p>2 Q. Do you recall approximately when --</p> <p>3 MR. CAHILL: If it's helpful, I could</p> <p>4 state for the record, Gail Luka gave a deposition</p> <p>5 authenticating documents and Jeff Archibald was</p> <p>6 the attorney who took the deposition. So Thomson</p> <p>7 had already produced somebody to authenticate</p> <p>8 documents. I think those documents -- the chief</p> <p>9 inquiry was the manufacturer file.</p> <p>10 Q. Why don't we look at area of inquiry</p> <p>11 number two in Exhibit A to the notice and</p> <p>12 subpoena. You're going to be asked today to</p> <p>13 testify "From January 1, 1990 to the present</p> <p>14 about the business practices concerning the</p> <p>15 procedure or means by which Thomson PDR Inc.</p> <p>16 determined the content, including prices</p> <p>17 published, whether by print or electronically,</p> <p>18 and Thomson PDR's Red Book and Red Book Update in</p> <p>19 published form, including all updates of related</p> <p>20 database versions."</p> <p>21 Are you prepared to testify on that</p> <p>22 area of inquiry?</p>	<p>1 in published form, including all updates and</p> <p>2 related database versions." That was a mouthful.</p> <p>3 Are you prepared to provide testimony</p> <p>4 on that area of inquiry?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And what did you do to prepare to</p> <p>7 provide testimony on that particular area of</p> <p>8 inquiry?</p> <p>9 A. Again, just my tenure as a manager of</p> <p>10 that content.</p> <p>11 Q. And just to confirm, during your</p> <p>12 tenure you were able to acquire some historical</p> <p>13 knowledge that allows you to testify about</p> <p>14 practices that predate your tenure as manager?</p> <p>15 A. (Nodding)</p> <p>16 MR. GASTWIRTH: Objection to form.</p> <p>17 MR. GOBENA: You could answer.</p> <p>18 A. Yes.</p> <p>19 Q. And topic number four -- let me ask</p> <p>20 you -- let's make it easier.</p> <p>21 Are there any of the areas of inquiry</p> <p>22 that you're not prepared to testify about today?</p>

15 (Pages 54 to 57)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 58</p> <p>1 A. No.</p> <p>2 Q. And aside from your time as a manager</p> <p>3 of the Red Book database, were there -- is there</p> <p>4 any other sources of information that you're</p> <p>5 going to be using to testify about any of the</p> <p>6 other four topics that we haven't covered</p> <p>7 specifically?</p> <p>8 A. No.</p> <p>9 Q. Let me ask, other than the subpoena</p> <p>10 issued by the United States on August 5th, 2008,</p> <p>11 are you aware of any other subpoenas that have</p> <p>12 been issued to Thomson Reuters related to drug</p> <p>13 pricing matters?</p> <p>14 A. Just the one mentioned previously that</p> <p>15 Gail Luka was involved with.</p> <p>16 Q. So you're not aware of any other</p> <p>17 subpoenas that might have been issued to Thomson</p> <p>18 Reuters or --</p> <p>19 A. No.</p> <p>20 MR. GOBENA: Why don't we go off the</p> <p>21 record now.</p> <p>22 MR. CAHILL: Sure.</p>	<p style="text-align: right;">Page 60</p> <p>1 characteristics are sometimes displayed, Orange</p> <p>2 Book codes, which are equivalency codes.</p> <p>3 Q. And how long has the Red Book been</p> <p>4 published for, to your knowledge?</p> <p>5 A. To my understanding, historically it</p> <p>6 goes back to 1890s.</p> <p>7 Q. And so going back as far as the 1890s,</p> <p>8 was the same type of information published, or</p> <p>9 how --</p> <p>10 A. I --</p> <p>11 Q. I'm asking you, to the best of your</p> <p>12 knowledge, for a sense of how it's evolved over</p> <p>13 time.</p> <p>14 A. I do not know what it was in the</p> <p>15 beginning years.</p> <p>16 Q. How far back does your historical</p> <p>17 knowledge go in terms of what was actually</p> <p>18 published inside the Red Book?</p> <p>19 A. Probably to the mid-'80s, when I used</p> <p>20 it as a pharmacy student, was my first exposure.</p> <p>21 Q. I probably should have gone over your</p> <p>22 background a little bit further earlier.</p>
<p style="text-align: right;">Page 59</p> <p>1 THE VIDEOGRAPHER: This is the</p> <p>2 videographer. Off the record at 9:35.</p> <p>3 (Recess taken)</p> <p>4 MR. GOBENA: Mark this Exhibit 4.</p> <p>5 (Excerpts from 1990 Red Book marked</p> <p>6 Exhibit Minne 004 for identification.)</p> <p>7 THE VIDEOGRAPHER: This is the</p> <p>8 videographer. Back on the record, 9:38.</p> <p>9 BY MR. GOBENA:</p> <p>10 Q. We've had -- I just asked the court</p> <p>11 reporter while we were off the record to mark</p> <p>12 Exhibit 4, a copy of this 1990 Red Book. And</p> <p>13 before we even get to the substance of the</p> <p>14 exhibit, why don't you explain for the record,</p> <p>15 what exactly is the Red Book?</p> <p>16 A. The Red Book is a compilation of</p> <p>17 pharmaceuticals, both prescription and</p> <p>18 non-prescription drugs, also some</p> <p>19 healthcare-related items, including their</p> <p>20 identifier, which can be an NDC, UPC, HRI,</p> <p>21 manufacturer, the price associated with that</p> <p>22 product, package size, again, physical</p>	<p style="text-align: right;">Page 61</p> <p>1 You said you were a pharmacy student.</p> <p>2 Are you a pharmacist?</p> <p>3 A. Yes, I'm a licensed pharmacist.</p> <p>4 Q. And just to get the record clear, when</p> <p>5 did you get your pharmacy license?</p> <p>6 A. In 1988.</p> <p>7 Q. You mentioned that in the mid-'80s as</p> <p>8 a pharmacy student you first became aware of the</p> <p>9 Red Book. In what capacity did you use it?</p> <p>10 A. In the capacity of working in a</p> <p>11 hospital and looking for available strengths. I</p> <p>12 did not use the pricing data since in a hospital</p> <p>13 setting you're not concerned with the pricing</p> <p>14 data, but just looking to see what other</p> <p>15 strengths were available when trying to fill an</p> <p>16 order that, you know, we didn't have in stock.</p> <p>17 Q. But in the mid-'80s, when you first</p> <p>18 became aware of the Red Book, there was pricing</p> <p>19 data that was published in there, to the best of</p> <p>20 your recollection?</p> <p>21 A. Honestly, I don't recall, because that</p> <p>22 was not what I was using the publication for.</p>

16 (Pages 58 to 61)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 62	Page 64
<p>1 Q. So you said you worked in the hospital</p> <p>2 setting as a student. When you graduated, did</p> <p>3 you continue to work in the hospital setting, or</p> <p>4 did you go somewhere else?</p> <p>5 A. I continued in the hospital setting.</p> <p>6 Q. And -- and where -- when you</p> <p>7 graduated, what hospital were you working at as a</p> <p>8 pharmacist?</p> <p>9 A. My first place of employment was</p> <p>10 Rochester Methodist Hospital, in Rochester,</p> <p>11 Minnesota, which is part of the Mayo medical</p> <p>12 system.</p> <p>13 Q. And you were working there starting in</p> <p>14 1988?</p> <p>15 A. Correct.</p> <p>16 Q. And where did you -- how long did you</p> <p>17 work at the Rochester Medical Center?</p> <p>18 A. I worked there until 1990.</p> <p>19 Q. And where did you go after that?</p> <p>20 A. I worked at St. Mary's Hospital, also</p> <p>21 in Rochester, and also part of the Mayo Medical</p> <p>22 Center.</p>	<p>1 Book at that stage?</p> <p>2 A. Correct.</p> <p>3 Q. And how long did you work at the Rose</p> <p>4 Medical Center?</p> <p>5 A. I worked there until 1997.</p> <p>6 Q. And that's when you went to Red Book?</p> <p>7 I'm sorry, not Red Book, Thomson Reuters.</p> <p>8 A. Right, correct.</p> <p>9 Q. And if I understood your testimony</p> <p>10 earlier correctly, your first direct work on Red</p> <p>11 Book in a pricing context was in 2002; is that</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. So prior to 2002 did you have any kind</p> <p>15 of knowledge or awareness of the pricing</p> <p>16 information that was being published in the Red</p> <p>17 Book?</p> <p>18 A. No.</p> <p>19 Q. Just to clarify, though, in the</p> <p>20 mid-1980s, when you first got exposed to Red</p> <p>21 Book, you knew -- there was pricing information</p> <p>22 published, you just didn't pay attention to it;</p>
Page 63	Page 65
<p>1 Q. And were you working there in the</p> <p>2 hospital context as well, or were you working</p> <p>3 outpatient? Where were you working?</p> <p>4 A. Inpatient pharmacy in both.</p> <p>5 Q. And after -- and how long did you work</p> <p>6 at St. Mary's?</p> <p>7 A. I worked there until 1991.</p> <p>8 Q. And where did you go after that?</p> <p>9 A. Then I went to Rose Medical Center in</p> <p>10 Denver.</p> <p>11 Q. Let me just backtrack to St. Mary's.</p> <p>12 In that context, did you at any point</p> <p>13 start to become aware of any of the pricing</p> <p>14 information in Red Book, or was it still not</p> <p>15 important to you?</p> <p>16 A. Not important to me.</p> <p>17 Q. So you went to the Rose Medical Center</p> <p>18 in Denver, and, again, were you working in an</p> <p>19 inpatient capacity?</p> <p>20 A. Yes, I was.</p> <p>21 Q. So I take it you continued to be</p> <p>22 uninterested in the pricing component of the Red</p>	<p>1 is that an accurate reflect of your testimony;</p> <p>2 earlier?</p> <p>3 A. I --</p> <p>4 MR. GASTWIRTH: Objection to form.</p> <p>5 A. I honestly don't know there was</p> <p>6 pricing. I'm assuming there was, but, yeah,</p> <p>7 that's not what I was using the publication for.</p> <p>8 Q. And let me just sort of go</p> <p>9 historically and clarify who exactly it was that</p> <p>10 published the Red Book.</p> <p>11 The Red Book is now a publication</p> <p>12 that's published at least on a macro level by</p> <p>13 Thomson Reuters; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Is it published by a particular unit</p> <p>16 within Thomson Reuters?</p> <p>17 A. The healthcare division.</p> <p>18 Q. And has Thomson Reuters always been</p> <p>19 the entity that published the Red Book?</p> <p>20 MR. CAHILL: Or a predecessor?</p> <p>21 MR. GOBENA: Or a predecessor, yeah.</p> <p>22 A. Originally it was Medical Economics,</p>

17 (Pages 62 to 65)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 66	Page 68
<p>1 and at some point Thomson purchased Medical 2 Economics. I don't know when that was. 3 Q. And I've also seen an entity 4 identified as Micromedex as well. 5 What's Micromedex? 6 A. Micromedex is a company in Denver that 7 was started in the mid-'70s, and then Thomson at 8 some point in the '90s came in and bought 9 Micromedex. 10 Q. Do you know when Thomson purchased 11 Micromedex? 12 A. I believe it was the early '90s. I 13 know it was prior to my employment there. 14 Q. And do you know when Thomson acquired 15 Medical Economics? 16 A. I do not know. 17 Q. That predated your employment as well? 18 A. Either predated my employment or 19 predated my understanding of the larger Thomson 20 corporation at that point. 21 Q. Do you know whether there is any kind 22 of relationship between Micromedex and Medical</p>	<p>1 form, too, that to the extent that during your 2 colloquy before the question you referred to the 3 Red Book being accurate. 4 MR. GOBENA: Okay. 5 Q. Sorry, I missed the answer to your 6 question. 7 MR. CAHILL: Is the question before 8 today -- 9 MR. GOBENA: Yeah. 10 MR. CAHILL: -- or before yesterday? 11 MR. GOBENA: It was before today, 12 actually. 13 A. Yesterday was when I first saw the 14 1990 Red Book. 15 Q. Prior to yesterday, did you review any 16 other Red Books in preparation for your testimony 17 today? 18 A. No. 19 Q. Just in the normal course of your work 20 as the manager of sort of overseeing the Red 21 Book, broken up -- is it a four or six-year 22 period?</p>
Page 67	Page 69
<p>1 Economics? 2 A. Other than they were both owned by 3 Thomson, no. 4 Q. Okay, why don't we take a look at 5 Exhibit 4, which is this 1990 Red Book. Well, 6 it's the cover page -- one of the cover pages 7 from the Red Book and some excerpts. And I'm 8 actually going to be using excerpts of the Red 9 Book as well today when I go through other Red 10 Books, you know, and I'll represent to you that 11 at least the Red Books that I -- the excerpts 12 that I've provided, we verified that they match 13 up with the years and everything, so they're 14 accurate. 15 And let's take a look at this version 16 of the 1990 Red Book. 17 Take a look at the last page of the 18 exhibit that we printed out here. And let me ask 19 you first, have you seen the 1990 Red Book prior 20 to your deposition today? 21 A. No. 22 MR. GASTWIRTH: And I'll object to</p>	<p>1 A. Four. 2 Q. Four, okay. 3 Yeah, the four-year period, had you had 4 an opportunity to look at historical Red Books? 5 A. No. 6 Q. I want to turn your attention to sort 7 of an entry here on the right side of Exhibit 4, 8 page -- it's on page 479 of the exhibit, last 9 page. There's a box in there, and it discusses 10 -- it mentions average wholesale prices. 11 Do you see that? 12 A. Yes, I do. 13 Q. And the box reads, "This average 14 wholesale price (AWP) reported is the result of 15 prices independently obtained from a 16 representative group of wholesalers located in 17 different areas of the country and then averaged 18 by the Red Book's editorial staff." 19 Do you see that there? 20 A. Yes, I do. 21 Q. Is this entry here in this 1990 Red 22 Book an accurate reflection of what the editorial</p>

18 (Pages 66 to 69)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 70	Page 72
<p>1 policy of Red Book was with respect to average 2 wholesale pricing in 1990? 3 MR. SWEENEY: Object to the form. 4 A. I do not have knowledge of what the 5 policy was in 1990. 6 Q. How far back does your knowledge of 7 Red Book's editorial policy with respect to the 8 reporting and AWP go? 9 A. The Denver office took over Red Book 10 in 2002, so at that point is when I received the 11 -- any historical information that I have. 12 Q. So you can't testify today whether 13 this excerpt in the 1990 Red Book reflected the 14 actual editorial policy at the time? 15 A. I cannot verify that. 16 MR. GOBENA: I'm going to have marked 17 as Exhibit 5 some excerpts -- not the whole thing 18 -- some excerpts of the 1996 Red Book, but before 19 I get to that, let's go back to Exhibit 4. 20 Q. Does that statement of AWP editorial 21 policy -- is it consistent with any understanding 22 you've ever had at any time of Red Book's AWP</p>	<p>1 MR. GASTWIRTH: This is all the copies 2 you have? 3 MR. GOBENA: Yes. I didn't anticipate 4 all these people. 5 (Excerpts from 1996 Red Book marked 6 Exhibit Minne 005 for identification.) 7 Q. And just to shorten the amount of time 8 it will take to look through this, I'm going to 9 ask you about the key to product listing, which 10 is the fourth page of this exhibit, in particular 11 -- you can read the whole page if you want, but 12 I'm going to ask you about sort of the section 13 that reads "How to read the listings." 14 So if you could just take a moment to 15 look at that. And again, if you want to look at 16 the whole page you're welcome to, if you want to 17 look at the whole exhibit you're welcome to, but 18 it probably will just be a waste of time. So just 19 let me know when you're ready. 20 MR. GASTWIRTH: And I'll just state on 21 the record that this appears to be a copy of a 22 Red Book that -- perhaps that wasn't published as</p>
Page 71	Page 73
<p>1 policy? 2 MR. GASTWIRTH: Objection to form. 3 MR. SWEENEY: Objection to form. 4 A. Not prior -- yesterday was the first 5 time I had any knowledge of this definition of 6 how they obtained AWP. 7 Q. In 1990? 8 A. In 1990. 9 Q. I'm asking you, though, based on your 10 historical knowledge, is that -- that description 11 of AWP editorial policy from 1990 consistent with 12 any AWP editorial policy that Red Book's had 13 during your tenure? 14 MR. GASTWIRTH: Objection to form. 15 A. No. 16 Q. And we'll get to what that AW policy 17 was for Red Book in due time. 18 MR. GOBENA: Let's have this marked as 19 Exhibit 5. 20 MR. FARQUHAR: I'm sorry, what year is 21 that? 22 MR. GOBENA: 1996.</p>	<p>1 a result of this case. 2 MR. ANDERSON: By "published," you mean 3 produced? 4 MR. GASTWIRTH: Wasn't produced in 5 connection with this case. 6 Do we have a Bates labeled version of 7 this? 8 MR. GOBENA: I don't, no. 9 MR. SWEENEY: Can you tell us where you 10 got it? 11 MR. GOBENA: I think, actually, the 12 government had copies of Red Books. 13 MR. SWEENEY: So it's from the 14 government's files? 15 MR. GOBENA: Yeah, but I'm -- are you 16 saying that you've never had a Red Book produced 17 -- copies in litigation? If not, in the 18 government case anyways, we can remedy that. 19 MR. ANDERSON: I believe Ven-A-Care has 20 made their Red Books available for inspection 21 over the years. I also believe that every drug 22 company in this room has copies of Red Books, so</p>

19 (Pages 70 to 73)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 74	Page 76
<p>1 I doubt the Red Book is too noteworthy. 2 MR. SWEENEY: I'm just trying to figure 3 out where the exhibit came from. 4 A. I'm ready. 5 Q. Let me ask you first, have you ever 6 reviewed a copy of the 1996 Red Book? 7 A. Not prior to yesterday. 8 Q. So yesterday you did have a chance to 9 review it? 10 A. Yes. 11 Q. But you testified earlier, though, 12 that you did develop some historical knowledge 13 that predates your tenure as the manager for Red 14 Book; isn't that correct? 15 A. Correct. 16 MR. GASTWIRTH: Objection to form. 17 Q. Let's take a look at the section that 18 reads "How to read the listings," and I'm going 19 to go through it in some detail. 20 Let me just read it into the record, 21 and then ask you what your knowledge and 22 understanding is of the information contained</p>	<p>1 Q. Do you know where the federal upper 2 limit price information was collected from, and 3 then ultimately published in Red Book? 4 MR. GASTWIRTH: Objection to form. 5 A. It was collected from the CMS website. 6 It's called CMS now, it might have been called 7 something else at the time. 8 Q. Are you familiar with the phrase 9 "HCFA"? 10 A. Yes, I am. 11 Q. It goes on to read, "Manufacturers are 12 listed alphabetically with generic listings. 13 Repackagers of products feature the 'repack' 14 symbol next to their names. For trade name 15 listings, generic cross-references appear in 16 lower case on the following line." 17 It goes on to say, "A three-letter 18 abbreviation indicates the form of the drug." 19 And moving on to the next paragraph, 20 "Route of administration, product descriptive 21 information, strength, quantity and drug class 22 symbol (where applicable) appear next, followed</p>
Page 75	Page 77
<p>1 herein. 2 "The first" -- it reads, "The first 3 line of an entry features the product or generic 4 name. HCFA federal upper limit price information 5 is provided for all applicable multi-source 6 product categories. The HCFA symbol can be found 7 immediately following the generic product name. 8 A complete listing of federal upper limit prices 9 appears in Section 8 (Third Party/Government 10 Information)." 11 Do you see that entry there? 12 A. Yes, I do. 13 Q. There's a mention of federal upper 14 limit prices being contained within the Red Book. 15 Was that true during your tenure 16 overseeing the publication of the Red Book? 17 A. Yes. 18 Q. And do you know whether that federal 19 upper limit price information was contained in 20 the Red Book prior to your tenure as a manager 21 overseeing Red Book? 22 A. My understanding is yes, it was.</p>	<p>1 by the National Drug Code number. The Average 2 Wholesale Price (AWP), Direct Price (DP) and the 3 Orange Book code complete the entry for each 4 product." 5 Is that basically still the same type 6 information that's being published in the Red 7 Book? 8 MR. SWEENEY: Objection to the form. 9 A. Yes, it is. 10 Q. And I notice that there's -- it 11 mentions that AWP and DP, or direct price 12 information, are published. There's no mention 13 of publication of WAC information. 14 Do you know why that is? 15 A. I do not. 16 MR. CAHILL: And all these questions 17 are about the hard copy -- 18 MR. GOBENA: Yeah. 19 MR. CAHILL: -- version of the Red 20 Book, just to clarify? 21 Q. Do you know whether -- whether WAC has 22 ever been published in the hard copy of the Red</p>

20 (Pages 74 to 77)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 78</p> <p>1 Book?</p> <p>2 A. To the best of my knowledge, no, it</p> <p>3 has not.</p> <p>4 Q. Is WAC copied in any electronic</p> <p>5 version of the Red Book?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Let's go on to the text beneath that</p> <p>8 graphic there on this page, and it reads, "All</p> <p>9 prices are current as of the date Red Book went</p> <p>10 to press. However, actual prices paid by</p> <p>11 retailers may vary, and all prices are subject to</p> <p>12 change without notice. The prices shown here are</p> <p>13 based on data obtained from manufacturers,</p> <p>14 distributors and other suppliers. While great</p> <p>15 care has been exercised in compiling this</p> <p>16 information, the publisher of Red Book does not</p> <p>17 warrant its accuracy."</p> <p>18 Is it consistent with your</p> <p>19 understanding of what -- the source of</p> <p>20 information for the prices published in Red Book,</p> <p>21 that that information, pricing information, came</p> <p>22 from either manufacturers, distributors or other</p>	<p style="text-align: right;">Page 80</p> <p>1 the Red Book?</p> <p>2 A. My understanding of this definition of</p> <p>3 suppliers is, again, someone who is labeling the</p> <p>4 product with their own NDC, so that could involve</p> <p>5 a repacker.</p> <p>6 Q. But it's safe to say, though, that the</p> <p>7 vast majority of the pricing information that</p> <p>8 would be provided and ultimately published in the</p> <p>9 Red Book, that would come from manufacturers;</p> <p>10 correct?</p> <p>11 MR. GASTWIRTH: Objection to form.</p> <p>12 A. Correct.</p> <p>13 Q. I want to shift gears slightly here,</p> <p>14 but we'll come back to the Red Books, to figure</p> <p>15 out exactly who was purchasing the Red Book and</p> <p>16 actually using it.</p> <p>17 Who actually were the Red Book's -- who</p> <p>18 were the customers who purchased the Red Book?</p> <p>19 A. Currently customers include</p> <p>20 manufacturers, third-party payors. I'm assuming</p> <p>21 -- I don't have direct knowledge of this -- but</p> <p>22 assuming still the small pharmacies would use</p>
<p style="text-align: right;">Page 79</p> <p>1 suppliers?</p> <p>2 MR. GASTWIRTH: Objection to form.</p> <p>3 A. Yes.</p> <p>4 Q. And let's focus on each of those</p> <p>5 entities.</p> <p>6 What kind of -- so pricing information</p> <p>7 would be provided by manufacturers and then used</p> <p>8 in the publication of the Red Book; is that</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 MR. GASTWIRTH: Objection to form.</p> <p>12 Q. Would distributors provide pricing</p> <p>13 information that would ultimately be published</p> <p>14 somewhere in the Red Book, the hard copy anyways?</p> <p>15 A. If they are labeling the product with</p> <p>16 their own label and NDC, then, yes.</p> <p>17 Q. So without labeling, you wouldn't be</p> <p>18 getting pricing information from distributors?</p> <p>19 A. No.</p> <p>20 Q. How about suppliers, what kind of</p> <p>21 pricing information would they provide that</p> <p>22 ultimately would be used in the publication of</p>	<p style="text-align: right;">Page 81</p> <p>1 this publication.</p> <p>2 Q. You mentioned that small pharmacies</p> <p>3 may still use the publication. Why did you paren</p> <p>4 the qualification?</p> <p>5 A. There's not a lot of small pharmacies</p> <p>6 left, and probably most of them are on some type</p> <p>7 of automated or direct link to payors, so claims</p> <p>8 would be submitted electronically versus</p> <p>9 manually.</p> <p>10 Q. What about large pharmacies, would</p> <p>11 they be purchasers of the Red Book?</p> <p>12 A. Potentially.</p> <p>13 Q. You mentioned third-party payors as</p> <p>14 being customers. Can you identify certain -- any</p> <p>15 specific third-party payors that you know were</p> <p>16 purchasers of the Red Book?</p> <p>17 A. I know of purchasers of the electronic</p> <p>18 files.</p> <p>19 Q. Okay. Why don't we talk about that,</p> <p>20 then.</p> <p>21 Which third-party payors purchased the</p> <p>22 electronic file version of the Red Book?</p>

21 (Pages 78 to 81)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 82	Page 84
<p>1 A. I know --</p> <p>2 MR. GASTWIRTH: Objection to form.</p> <p>3 What time period are we talking about?</p> <p>4 Q. Give me your historical -- just --</p> <p>5 MR. GOBENA: That's a fair objection.</p> <p>6 Q. From 1990 to the present, to the best</p> <p>7 of your knowledge, what third-party payors were</p> <p>8 using the electronic version of Red Book?</p> <p>9 MR. GASTWIRTH: Objection.</p> <p>10 A. I can speak from 2002 --</p> <p>11 Q. Okay.</p> <p>12 A. -- to present, and the ones I've been</p> <p>13 aware of that have in that point or still are</p> <p>14 using include Merck MedCo, EDS, Express Scripts.</p> <p>15 Q. Do you know of any governmental</p> <p>16 entities that either directly or through</p> <p>17 contractors use Red Book pricing information?</p> <p>18 A. I do not know.</p> <p>19 Q. What's your understanding --</p> <p>20 MR. GOBENA: Actually, strike that.</p> <p>21 Q. Are you aware of any communications or</p> <p>22 discussions that have ever occurred between</p>	<p>1 whether it's consistent with your historical</p> <p>2 understanding of Red Book's editorial practices.</p> <p>3 First of all, do you by any chance know</p> <p>4 who Mr. Steve Sorkenn of Red Book is?</p> <p>5 A. I do not.</p> <p>6 Q. So he was -- to the best of your</p> <p>7 knowledge, he was no longer employed at Thomson</p> <p>8 or Medical Economics from the beginning of your</p> <p>9 tenure?</p> <p>10 A. Correct.</p> <p>11 Q. Well, there's a section of this</p> <p>12 document I want to focus in on in particular. And</p> <p>13 -- again, this is an internal HHS memo where</p> <p>14 Elliot Hirschon from DHHS-OIG, OAS Region II, was</p> <p>15 having a discussion with Mr. Sorkenn, and</p> <p>16 memorialized that discussion.</p> <p>17 I want to direct your attention to the</p> <p>18 section that reads "Sources of Information." And</p> <p>19 in particular we'll start with that first</p> <p>20 paragraph.</p> <p>21 Mr. Hirshon writes -- and, again, he's</p> <p>22 memorializing his conversation with Mr. Sorkenn</p>
Page 83	Page 85
<p>1 officials at Red Book and officials at what was</p> <p>2 previously called HCFA, the Healthcare Financing</p> <p>3 Administration, about the pricing information</p> <p>4 that is provided in the information?</p> <p>5 A. I am not aware of any conversations.</p> <p>6 MR. GOBENA: I'll have this marked as</p> <p>7 Exhibit 6.</p> <p>8 (Document bearing Bates Nos. HHD</p> <p>9 812-006 through 812-009 marked Exhibit Minne 006</p> <p>10 for identification.)</p> <p>11 Q. Why don't you just take a quick moment</p> <p>12 to review the document.</p> <p>13 MR. GOBENA: The document is Bates</p> <p>14 labeled HHD 812-006 through 009, it's a memo</p> <p>15 drafted by -- within HHS about chemo drugs, drug</p> <p>16 pricing, memorandum of discussion, dated October</p> <p>17 28th through November 4th, 1991.</p> <p>18 (Pause)</p> <p>19 Q. Now, I understand, Miss Minne, this</p> <p>20 probably predates your tenure at Red Book, so</p> <p>21 what I'm going to do is ask you some questions</p> <p>22 about what's stated in the document, and ask</p>	<p>1 -- he says, "Mr. Sorkenn stated that the average</p> <p>2 wholesale price, AWP, is based on data from</p> <p>3 several sources. He explained that Red Book goes</p> <p>4 through the same basic processes as its</p> <p>5 competitors, MediSpan, First Data, Blue Book, to</p> <p>6 develop the AWP as well as the published direct</p> <p>7 price and suggested retail price."</p> <p>8 The next sentence reads, "He indicated</p> <p>9 that the primary source of information is the</p> <p>10 manufacturer."</p> <p>11 Is that sort of -- again, this is Mr.</p> <p>12 Hirschon reflecting his conversation with Mr.</p> <p>13 Sorkenn, but is that statement, that the primary</p> <p>14 source of pricing information is the</p> <p>15 manufacturer, consistent with your historical</p> <p>16 knowledge as to where Red Book collected its</p> <p>17 pricing data?</p> <p>18 MR. GASTWIRTH: Objection to form.</p> <p>19 A. Yes, it is.</p> <p>20 Q. He says -- he goes on to say, "This</p> <p>21 information is obtained either from surveys,</p> <p>22 questionnaires, which Red Book sends to the</p>

22 (Pages 82 to 85)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 86</p> <p>1 manufacturers, or the manufacturers may 2 voluntarily send the information to Red Book." 3 And he goes on to say that "Mr. Sorkenn felt that 4 a blank copy of the questionnaire could not be 5 forwarded since it represents proprietary 6 information." 7 Are you aware of any questionnaires or 8 surveys that were sent to Red Book by 9 manufacturers to collect pricing information that 10 would ultimately be published in the Red Book? 11 MR. GASTWIRTH: Objection to form. 12 A. My assumption is he's referring to 13 something we call a PLV, product listing 14 verification form. 15 Q. Why don't you describe what that is. 16 A. A PLV is a listing of what Red Book 17 currently has listed for a manufacturer; 18 products, package size, NDC, also pricing, and 19 it's a form that's sent to manufacturers on a 20 yearly basis, asking them to verify and confirm 21 that the product is still available and that that 22 price, with its effective date, is still</p>	<p style="text-align: right;">Page 88</p> <p>1 I'm going to ask you first about the 2 first clause of that sentence. 3 Is it your understanding, based on your 4 experience and tenure, both overseeing Red Book 5 and at Thomson generally, that manufacturers were 6 generally cooperative about providing price 7 information that ultimately would be published in 8 the Red Book? 9 MR. GASTWIRTH: Object to form. 10 MR. CAHILL: Yeah, we object to form as 11 well, without a clarification of the time period. 12 MR. GOBENA: A time period, okay. 13 Q. Let me ask you, based on your tenure, 14 the four-year tenure -- let's at least start with 15 that -- overseeing the publication, as a manager 16 overseeing the publication of Red Book, is the 17 statement that the manufacturers were cooperative 18 in supplying requested pricing information, is 19 that consistent with your understanding? 20 MR. GASTWIRTH: Objection to form. 21 A. I guess -- I'm not sure what the 22 definition of "most" is. The majority.</p>
<p style="text-align: right;">Page 87</p> <p>1 accurate. 2 Q. We'll go over some of those -- I think 3 the product listing verifications a little bit 4 later. 5 It says, "According to Mr. Sorkenn, Red 6 Book's questionnaires ask manufacturers to supply 7 AWP as well as DP." 8 Is that consistent with your historical 9 understanding of what kind of information would 10 be asked of manufacturers by Red Book? 11 MR. GASTWIRTH: Objection to form. 12 A. Yes. 13 MR. SWEENEY: Can you read back the 14 question, please. 15 (Record read) 16 Q. Mr. Hirschon goes on to say in this 17 memo, "While he" -- and he's referring to Mr. 18 Sorkenn -- "felt that most manufacturers are 19 cooperative and supply all the requested 20 information, Red Book can use alternative sources 21 to either develop or corroborate this 22 information."</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. He goes on to say, "Red Book can use 2 alternative sources to either develop or 3 corroborate pricing information," and he gives 4 some examples. He says, "For example, Red Book 5 receives information on tape from wholesalers 6 each month." 7 Now, that might have been true in 1991. 8 I want to get your best recollection based on 9 your historical knowledge and your direct tenure 10 as a manager for Red Book. 11 Do you recall at any point wholesalers 12 providing tapes of pricing information to 13 Thomson? 14 MR. GASTWIRTH: Objection to form. 15 A. Not during my tenure. We did not 16 receive tapes from wholesalers. 17 Q. Did you receive any other kind of 18 information from wholesalers that contained 19 pricing information that would ultimately be 20 published in the Red Book, during your tenure as 21 the manager? 22 A. Not during my tenure, we did not.</p>

23 (Pages 86 to 89)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 90	Page 92
<p>1 Q. If a manager was not cooperative and 2 provide -- 3 MR. GOBENA: Manager? 4 Q. If a manufacturer was not cooperative 5 in providing pricing information to Red Book -- 6 again, I'm focusing on your tenure as manager of 7 Red Book, that four-year period -- if they 8 weren't cooperative, were there alternative 9 sources of information that you could go to to 10 collect pricing information for a product listed 11 in the Red Book? 12 A. No. 13 MR. CAHILL: Objection to form. 14 Q. No, okay. 15 So the sole source would be the 16 manufacturer -- 17 MR. GASTWIRTH: Objection to form. 18 Q. -- for pricing information? 19 A. Up until the point where we 20 implemented the AWP policy. 21 Q. So you say up until you implemented 22 the AWP policy. What's the start date of your</p>	<p>1 record is clear. 2 A. My understanding is that the sole 3 source of pricing information from manufacturers 4 -- that manufacturers were the sole source of 5 pricing information up until the time we 6 implemented the Red Book policy, which was early 7 2003 -- I'm sorry, the AWP policy, which was 8 2003. 9 Q. So the beginning date of that 10 understanding, was that when you started as the 11 manager of Red Book or can it precede that? 12 Because I remember you said you started in 2000 13 for a two-year block as manager of the Red Book 14 database. 15 MR. GASTWIRTH: Objection to form. 16 A. I started in 2002 as manager of the 17 Red Book database. 18 Q. But even before 2002, based on your 19 tenure and the historical knowledge that you've 20 collected, was it true that, you know, prior to 21 the AWP policy in early 2003, was it true that 22 the manufacturers were really the primary or the</p>
Page 91	Page 93
<p>1 knowledge and what's the end date of your 2 knowledge that the sole source of information 3 would be the manufacturers for pricing 4 information? 5 MR. GASTWIRTH: Objection to form, and 6 I believe that's inconsistent with this witness' 7 prior testimony. 8 A. Okay, I'm sorry, can you repeat the 9 question? 10 Q. Sure. 11 You testified that prior to the 12 implementation of an AWP policy, the 13 manufacturers were the sole source of pricing 14 information that was ultimately published in the 15 Red Book. 16 Is that an accurate reflection of your 17 testimony? 18 A. Yes. 19 MR. GASTWIRTH: Objection to form. 20 Q. And what's the start date of that 21 understanding? I want to get a time period of 22 when you had that understanding so that the</p>	<p>1 sole source of pricing information that was 2 ultimately published in the Red Book? 3 MR. GASTWIRTH: Objection to form -- 4 A. Yes. 5 MR. GASTWIRTH: -- I believe that's 6 inconsistent with the witness' prior testimony. 7 MR. GOBENA: We don't need a speaking 8 objection. 9 MR. ANDERSON: Particularly when she 10 says "yes." 11 MR. GOBENA: There's only a few minutes 12 left on the tape, so why don't we go off the 13 record then. 14 THE VIDEOGRAPHER: This is the 15 videographer. 16 This ends tape number one of the record 17 at 10:13. We're off the record. 18 (Recess taken) 19 THE VIDEOGRAPHER: This is the 20 videographer. 21 This begins tape number two at 10:31. 22 We're back on the record at this time.</p>

24 (Pages 90 to 93)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 94	Page 96
<p>1 MR. GOBENA: I'm going to have another</p> <p>2 document here marked as Exhibit 7.</p> <p>3 (Document bearing Bates Nos. Red Book</p> <p>4 06983 marked Exhibit Minne 007 for</p> <p>5 identification.)</p> <p>6 MR. GOBENA: Since we have a shortage</p> <p>7 of copies, let me just describe what the document</p> <p>8 is and the Bates number.</p> <p>9 It is a Red Book product listing</p> <p>10 verification dated September -- well, the top</p> <p>11 says September 29th, 1999, and the Bates number</p> <p>12 is Red Book 06983.</p> <p>13 BY MR. GOBENA:</p> <p>14 Q. Miss Minne, if you could have a chance</p> <p>15 to sort of look through the document generally,</p> <p>16 that would be great. And just let me know when</p> <p>17 you're ready.</p> <p>18 (Pause)</p> <p>19 A. I'm ready.</p> <p>20 Q. This is a product listing</p> <p>21 verification, and at the top left corner you'll</p> <p>22 see it says "Dey," it has an address for Dey, and</p>	<p>1 verification printouts, are they sent to every</p> <p>2 manufacturer that has a drug listed in the Red</p> <p>3 Book?</p> <p>4 A. Yes, they are.</p> <p>5 MS. LORENZO: Objection, form.</p> <p>6 Q. And why are -- why is Red Book sending</p> <p>7 out this product listing verification form to</p> <p>8 these manufacturers?</p> <p>9 MS. LORENZO: Objection, form.</p> <p>10 A. It is a process by which we attempt</p> <p>11 to, first of all, verify that we have all the</p> <p>12 correct products listed for that manufacturer,</p> <p>13 and also to verify that the prices are still</p> <p>14 accurate.</p> <p>15 Q. So when you're sending out these</p> <p>16 tables or charts that are generated, you're</p> <p>17 sending it out hoping that the manufacturers will</p> <p>18 correct any errors, whether it's pricing or</p> <p>19 listing of a product that's no longer active; is</p> <p>20 that correct?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 A. We hope that they will return it to us</p>
Page 95	Page 97
<p>1 it's nine pages of product listings.</p> <p>2 First, if you could tell me what</p> <p>3 exactly -- we talked about this a little bit</p> <p>4 earlier, but explain in detail, what exactly is a</p> <p>5 product listing verification?</p> <p>6 A. A product listing verification is a</p> <p>7 printout of all of the manufacturer's products</p> <p>8 that the Red Book currently has in their</p> <p>9 database.</p> <p>10 Let me qualify that with saying it's a</p> <p>11 listing of all the active products, meaning</p> <p>12 products that we have listed that we believe are</p> <p>13 still currently manufactured.</p> <p>14 Q. So who generates this printout that</p> <p>15 we're looking at here?</p> <p>16 A. This is generated by the Red Book</p> <p>17 staff.</p> <p>18 Q. And once they generate this printout,</p> <p>19 what do they do with it?</p> <p>20 A. This printout is mailed once a year to</p> <p>21 the manufacturer.</p> <p>22 Q. And are these product listing</p>	<p>1 with any price changes, along with their</p> <p>2 effective dates, or, you know, mark things that</p> <p>3 are no longer manufactured.</p> <p>4 Q. Let's take a look at this particular</p> <p>5 product listing verification. There seem to be</p> <p>6 several columns here. The first column is NDC.</p> <p>7 I assume that's meant for the</p> <p>8 manufacturer's NDC to be listed on the chart; is</p> <p>9 that correct?</p> <p>10 A. Correct.</p> <p>11 Q. And then you have a product name</p> <p>12 listed there.</p> <p>13 Is that just the sort of -- the name by</p> <p>14 which that particular NDC is listed?</p> <p>15 A. Correct.</p> <p>16 Q. There's a column that says "OB." What</p> <p>17 does that stand for?</p> <p>18 A. That is a column that describes the</p> <p>19 Orange Book code.</p> <p>20 Q. Let's take a look at the second</p> <p>21 listing. For example, there's AN listed -- AN</p> <p>22 listed in that OB column that's on that first</p>

25 (Pages 94 to 97)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 98	Page 100
<p>1 page.</p> <p>2 What does AN stand for?</p> <p>3 A. I would -- I don't recall off the top</p> <p>4 of my head; I would have to look at the list of</p> <p>5 Orange Book codes.</p> <p>6 Q. There's a column that says "PT."</p> <p>7 What's PT?</p> <p>8 A. That is a column I am not familiar</p> <p>9 with as it no longer exists on the PLV form.</p> <p>10 Q. What does the column titled "DEA"</p> <p>11 stand for?</p> <p>12 A. That is a column that designates</p> <p>13 whether a product is a prescription or</p> <p>14 over-the-counter item.</p> <p>15 Q. And there's a column that says "UD."</p> <p>16 What does that stand for?</p> <p>17 A. That stands for unit dose, meaning</p> <p>18 that the product would be packaged in unit dose</p> <p>19 form.</p> <p>20 Q. And then the next column says "AWP,"</p> <p>21 and there -- if you look down the column there</p> <p>22 are various prices listed there.</p>	<p>1 A. That handwriting would be from the</p> <p>2 manufacturer, from the person who signed it at</p> <p>3 the bottom.</p> <p>4 Q. And let's take a look at that</p> <p>5 signature at the bottom. There's some -- on the</p> <p>6 bottom left of the first page of this exhibit it</p> <p>7 says, "Instructions: Please make corrections</p> <p>8 directly on this printout."</p> <p>9 So those instructions, those are from</p> <p>10 the Red Book staff to the manufacturers?</p> <p>11 A. Correct.</p> <p>12 Q. And that appears to be what's happened</p> <p>13 in that second row with respect to the AWP for</p> <p>14 Acetylcysteine --</p> <p>15 MS. LORENZO: Objection.</p> <p>16 Q. -- correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then there's two -- beneath the</p> <p>19 instructions there's a line that says, you know,</p> <p>20 "Okay as is" or "Okay with changes." Although</p> <p>21 there are changes on this first page, it looks</p> <p>22 like the "Okay as is" box is checked.</p>
Page 99	Page 101
<p>1 Let's take a look at the second row on</p> <p>2 this first page of this exhibit. There is a --</p> <p>3 originally there was a price listed of 67.80 for</p> <p>4 Acetylcysteine -- I'm probably mispronouncing</p> <p>5 that -- the NDC is 49502-0181-04.</p> <p>6 For this product there is a price there</p> <p>7 of 67.80 and a line through it, and beneath that</p> <p>8 handwritten in a price of 56.50.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. That original, sort of printed price</p> <p>12 that's on there, who would have generated that</p> <p>13 price on this chart?</p> <p>14 MS. LORENZO: Objection to form.</p> <p>15 A. That 67.80 is the price that would</p> <p>16 have been listed at the time that the PLV was</p> <p>17 printed, the price that was listed in the Red</p> <p>18 Book database.</p> <p>19 Q. And the handwriting -- to the best of</p> <p>20 your knowledge or understanding, whose</p> <p>21 handwriting would be on a PLV changing a price?</p> <p>22 MS. LORENZO: Objection to form.</p>	<p>1 Do you see that there?</p> <p>2 A. Yes.</p> <p>3 Q. And then a signature as well.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And that signature, that would not be</p> <p>7 a Red Book employee's signature, would it?</p> <p>8 MS. LORENZO: Object to form.</p> <p>9 A. It should not be. I do not know that</p> <p>10 name.</p> <p>11 Q. But it should be an employee of the</p> <p>12 manufacturer; correct?</p> <p>13 A. Correct, it should be --</p> <p>14 MS. LORENZO: Objection to form.</p> <p>15 A. -- a representative of the</p> <p>16 manufacturer.</p> <p>17 Q. Now, Dey -- Dey Labs, to your</p> <p>18 knowledge, has products listed in the Red Book;</p> <p>19 isn't that correct?</p> <p>20 A. Correct.</p> <p>21 Q. And to the extent to which Dey had</p> <p>22 products listed in the given year, they would</p>

26 (Pages 98 to 101)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 102	Page 104
<p>1 always receive a product listing verification; is 2 that correct? 3 MS. LORENZO: Object to the form. 4 A. Correct. 5 Q. And you'd expect Dey to correct any 6 mistakes with respect to the pricing information 7 -- their pricing information in the Red Book 8 through the product listing verification process; 9 correct? 10 MS. LORENZO: Object to form. 11 A. Correct. They could also provide any 12 updates to us via e-mail or any other printed 13 communication throughout the year. 14 Q. To your knowledge, did they ever 15 refuse to engage in the process of verifying 16 their prices through the product listing 17 verification -- 18 MS. LORENZO: Object to form. 19 Q. -- form? 20 A. I am not aware of whether they 21 objected or -- participated or not. 22 MR. GOBENA: I'll have that marked as</p>	<p>1 letter, you're right, there's a document signed 2 October 5th, and then there's signatures October 3 11th. 4 MR. ANDERSON: The second page is dated 5 October 5th, 2000. 6 BY MR. GOBENA: 7 Q. Miss Minne, having looked at this 8 document, do you recognize it as a product 9 listing verification for Roxane Laboratories? 10 MR. GASTWIRTH: Objection to form. 11 A. Yes, I do. 12 Q. To your knowledge, did Roxane 13 Laboratories ever refuse to provide a product 14 listing verification for its entries in the Red 15 Book? 16 MR. GASTWIRTH: Objection to form. 17 A. I do not have knowledge of whether 18 they did or did not. 19 Q. But every year Red Book would send out 20 product listing verifications, again, to 21 manufacturers, such as Roxane, that published 22 information in the Red Book; correct?</p>
Page 103	Page 105
<p>1 Exhibit 8. 2 (October 2000 product listing 3 verification for Roxane Laboratories marked 4 Exhibit Minne 008 for identification.) 5 Q. Just take a moment, Miss Minne, just 6 to quickly skim through it. 7 MR. GOBENA: Just for the people who 8 don't have copies, it's an October 5th, 2000 9 price verification -- price listing verification 10 from Roxane Laboratories. Actually, my copy has 11 a Roxane Bates number, I know that there's a Red 12 Book Bates number -- I believe it's 14216. 13 MR. GASTWIRTH: Where do you see the 14 October 5th date? 15 MR. GOBENA: If you go a little bit 16 further into the document, you'll see October -- 17 oh, sorry, there's October -- there's various 18 dates, it's in October 2000. 19 MR. ANDERSON: October 5th on the -- 20 MR. GOBENA: First. 21 MR. ANDERSON: -- cover page. 22 MR. GOBENA: It's an October 17th</p>	<p>1 A. Correct. 2 MR. GASTWIRTH: Objection to form. 3 Q. Take a look at -- let's turn to a 4 particular page here. If you look at the top 5 right corner there's page 1 of 31, 2, 3 -- the 6 one I'm looking at is page 13 of 31. 7 Go down to the fourth entry on page 13 8 of 31 of this 2000 Roxane product listing 9 verification. I'm looking at the line NDC 10 00054-8402-21, it's for Ipratropium Bromide. And 11 do you see the various columns that are somewhat 12 similar to, if not exactly the same as, the 13 columns in the previous exhibit, and we see 14 there's a column there for AWP and there's a 15 price listed there of 105.74? 16 Do you see that? 17 A. Yes, I do. 18 Q. I notice here that there is no price 19 listed under DIRP. 20 Is that -- was that unusual, for a 21 manufacturer not to list a price under DIRP? 22 MR. GASTWIRTH: Objection to form.</p>

27 (Pages 102 to 105)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 106	Page 108
<p>1 A. No.</p> <p>2 Q. Why was it not unusual?</p> <p>3 A. Umm --</p> <p>4 MR. GASTWIRTH: Objection to form.</p> <p>5 A. Many manufacturers do not provide</p> <p>6 direct pricing.</p> <p>7 Q. That's what the DIRP stands for,</p> <p>8 direct price?</p> <p>9 A. Correct. And they are not required</p> <p>10 to.</p> <p>11 Q. At this time period, October 2000, did</p> <p>12 Red Book have that electronic version of the</p> <p>13 database that we were talking about earlier?</p> <p>14 A. Yes, they did.</p> <p>15 Q. Is it possible that the direct price</p> <p>16 for this product would have been listed -- if</p> <p>17 there was any -- in that electronic database?</p> <p>18 MR. GASTWIRTH: Objection to form.</p> <p>19 A. If there was a direct price in the</p> <p>20 electronic database, it should be on this list as</p> <p>21 well.</p> <p>22 Q. So the hard copy of the price listing</p>	<p>1 verification would have been sent to Dey asking</p> <p>2 about that particular price?</p> <p>3 MS. LORENZO: Objection, form.</p> <p>4 MR. GOBENA: I'm sorry, Roxane. I</p> <p>5 apologize.</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 MR. GOBENA: That's why you objected?</p> <p>8 That's how I knew I had the question wrong.</p> <p>9 MR. CAHILL: Do you understand the</p> <p>10 question?</p> <p>11 THE WITNESS: Yes.</p> <p>12 A. There should have been a PLV for 1998</p> <p>13 and 1999, and this is the 2001.</p> <p>14 Q. So there would have been two PLVs sent</p> <p>15 to Roxane regarding that price?</p> <p>16 A. Correct.</p> <p>17 MR. GASTWIRTH: Objection to form.</p> <p>18 Q. Before this particular --</p> <p>19 A. Correct.</p> <p>20 Q. Outside of the --</p> <p>21 MR. GOBENA: Sorry.</p> <p>22 Q. If we go to the bottom of the page,</p>
Page 107	Page 109
<p>1 verification corresponds with what's both in the</p> <p>2 hard copy Red Book as well as in the electronic</p> <p>3 database?</p> <p>4 A. Yes.</p> <p>5 Q. If you look at the last column to the</p> <p>6 right, it says, "Effective Date."</p> <p>7 What does effective date mean?</p> <p>8 A. The effective date represents the date</p> <p>9 that that price went into effect.</p> <p>10 Q. So this is a document that appears to</p> <p>11 be dated October of 2000, yet the effective date</p> <p>12 is December 10th, 1997. Why would there be a</p> <p>13 discrepancy between the two dates?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 A. What this means is that this price of</p> <p>16 105.74 became effective on 12/10 of '97, and we</p> <p>17 had not received any price changes since that</p> <p>18 time.</p> <p>19 Q. And between December 10th, '97 and</p> <p>20 this particular price listing verification of</p> <p>21 October 2000, approximately how many price</p> <p>22 listing verification -- product listing</p>	<p>1 you'll see a signature there.</p> <p>2 I don't suppose you recognize the</p> <p>3 signature?</p> <p>4 A. No, I don't.</p> <p>5 Q. Okay. But it's fair to say that that</p> <p>6 signature would not be a Red Book employee's</p> <p>7 signature; correct?</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 A. Correct.</p> <p>10 Q. It would be in all likelihood a</p> <p>11 manufacturer's signature; correct?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 A. Correct, it should be the person at</p> <p>14 the manufacturer -- manufacturer company that's</p> <p>15 listed on the page here that we have as the</p> <p>16 contact person, it should be their signature.</p> <p>17 Q. And the contact person here for this</p> <p>18 Roxane product listing verification is someone</p> <p>19 identified as Michelle Summers.</p> <p>20 Do you know Miss Summers by any chance?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 A. No, I don't.</p>

28 (Pages 106 to 109)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 110	Page 112
<p>1 MR. GOBENA: I'll have this marked as</p> <p>2 Exhibit 9.</p> <p>3 (Price listing verification for Abbott</p> <p>4 Hospital Products, the first page bearing Bates</p> <p>5 No. Red Book 01172 marked Exhibit Minne 009 for</p> <p>6 identification.)</p> <p>7 Q. I just want you to take a moment to</p> <p>8 skim through it, Miss Minne, and I'll describe it</p> <p>9 for the record.</p> <p>10 MR. GOBENA: It's a document with the</p> <p>11 Bates number Red Book 01172, it's a Red Book</p> <p>12 price listing verification, and at the top left</p> <p>13 corner indicates that the company at issue is</p> <p>14 Abbott Hospital Products, and it's 133 pages</p> <p>15 long.</p> <p>16 MR. FARQUHAR: What's the date, please,</p> <p>17 Counselor?</p> <p>18 MR. GOBENA: Sorry, it's December --</p> <p>19 there's a date stamp on the top right corner,</p> <p>20 which may be when it was received, of December</p> <p>21 17th, 2002.</p> <p>22 Q. I mean, you could skim through it, but</p>	<p>1 Q. And do you have an understanding as to</p> <p>2 why certain manufacturers would sign certain</p> <p>3 pages and not sign certain pages of the price</p> <p>4 listing verification?</p> <p>5 MS. CITERA: Objection to form.</p> <p>6 A. Certain manufacturers will only sign</p> <p>7 -- because of the thickness, the number of pages</p> <p>8 of this document, they will only sign the ones</p> <p>9 where they actually make changes on.</p> <p>10 Q. On a particular listing?</p> <p>11 A. Yeah, if they make a change on the</p> <p>12 page they'll sign that change, but if they make</p> <p>13 no changes they won't bother to sign it.</p> <p>14 Q. And turning to page 106, which also</p> <p>15 has the Bates number Red Book 01279, you'll see</p> <p>16 there are some changes being made there for a</p> <p>17 couple of listings for Sodium Chloride.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And the manufacturer here is changing</p> <p>21 what appears to be the direct price and the WAC.</p> <p>22 Do you see that there?</p>
Page 111	Page 113
<p>1 really the pages I'm going to -- I'm going to</p> <p>2 focus on one page in particular, maybe another</p> <p>3 one, and that's 106 of 133.</p> <p>4 MS. CITERA: I'm just going to put my</p> <p>5 objection on the record to Mr. Gobena asking</p> <p>6 questions with respect to my client. This</p> <p>7 deposition is not noticed in the Abbott DOJ case</p> <p>8 and is outside the scope of the Thomson notice.</p> <p>9 Q. Let me ask you first, though, before I</p> <p>10 ask about page 106, you'll notice that some of</p> <p>11 these pages -- skipping through it, for example,</p> <p>12 page 106 has a signature and some changes, and</p> <p>13 some of the pages don't have signatures at the</p> <p>14 bottom.</p> <p>15 Do you see that there?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Have you seen any other product</p> <p>18 listing verifications from other manufacturers</p> <p>19 where some pages were signed and other pages were</p> <p>20 not?</p> <p>21 A. Yes, I have.</p> <p>22 MS. CITERA: Objection to form.</p>	<p>1 A. Yes, I do.</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 Q. Is it true that some manufacturers</p> <p>4 will change AWP and other prices and some</p> <p>5 manufacturers will only change WAC and direct</p> <p>6 prices?</p> <p>7 MS. CITERA: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. In an instant here -- instance here</p> <p>10 where you have a manufacturer changing a direct</p> <p>11 and a WAC price but not the AWP price, what, if</p> <p>12 anything, would Red Book do with respect to the</p> <p>13 AWP listed in this product listing verification,</p> <p>14 or in the database?</p> <p>15 MS. CITERA: Objection, form.</p> <p>16 MR. CAHILL: For what period of time?</p> <p>17 MR. GOBENA: The time period covered by</p> <p>18 the deposition.</p> <p>19 MR. GASTWIRTH: I'll object to form</p> <p>20 also.</p> <p>21 MR. CAHILL: The only clarification</p> <p>22 because the AWP policy comes in 2003.</p>

29 (Pages 110 to 113)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 114	Page 116
<p>1 MR. GOBENA: Okay, predating -- this</p> <p>2 document predates the AWP policy.</p> <p>3 Q. So predating the AWP policy, if a</p> <p>4 manufacturer such as here changed only direct</p> <p>5 price and the WAC in the product listing</p> <p>6 verification, what, if anything, would Red Book</p> <p>7 do to the AWP listed for that product?</p> <p>8 MR. GASTWIRTH: Objection.</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 A. Red Book would have updated the direct</p> <p>11 price and the WAC price but would not have</p> <p>12 altered the AWP price.</p> <p>13 MR. SWEENEY: I'm sorry, I missed the</p> <p>14 end of that. Can you read it back, please?</p> <p>15 (Record read)</p> <p>16 Q. And that's your understanding of what</p> <p>17 happened prior -- Red Book would do prior to the</p> <p>18 implementation of the AWP policy in early 2003?</p> <p>19 A. Correct.</p> <p>20 MS. CITERA: Objection to form.</p> <p>21 Q. Based on this document, you'll agree</p> <p>22 with me that Abbott Hospital Products did review</p>	<p>1 only going to ask you about the 2001 Red Book, so</p> <p>2 once the court reporter's able to mark that, I'll</p> <p>3 have you take a look at it.</p> <p>4 (Excerpts from 2001 and 2002 Red Books</p> <p>5 marked Exhibit Minne 010 for identification.)</p> <p>6 MR. GASTWIRTH: I'm sorry, what exhibit</p> <p>7 number is this?</p> <p>8 MR. GOBENA: Ten.</p> <p>9 MR. GASTWIRTH: And I'll just note an</p> <p>10 objection on the record that this document does</p> <p>11 not appear to be produced because there's no</p> <p>12 Bates label on this document.</p> <p>13 MR. GOBENA: Are you going to represent</p> <p>14 that Roxane does not possess copies of the Red</p> <p>15 Book?</p> <p>16 MR. GASTWIRTH: I stated my objection</p> <p>17 on the record.</p> <p>18 MR. SWEENEY: Did this come from the</p> <p>19 government's files again?</p> <p>20 MR. GOBENA: It might have, yes.</p> <p>21 MR. SWEENEY: It might have?</p> <p>22 MR. GOBENA: I'm not going to enter</p>
Page 115	Page 117
<p>1 the pricing listing verification and make changes</p> <p>2 where appropriate, wouldn't you?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 A. Yes, I would agree with that.</p> <p>5 Q. Do you have any recollection or</p> <p>6 understanding of Abbott Hospital Products not</p> <p>7 complying with Red Book's policy of seeking</p> <p>8 product listing verifications from manufacturers</p> <p>9 who list in the Red Book?</p> <p>10 A. I do not have --</p> <p>11 MS. CITERA: Objection to form.</p> <p>12 A. -- recollection of whether...</p> <p>13 Q. You have no reason to believe that</p> <p>14 they didn't comply, though?</p> <p>15 A. Right --</p> <p>16 MS. CITERA: Objection, form.</p> <p>17 A. -- I don't know whether they did or</p> <p>18 not.</p> <p>19 Q. I'm going to shift gears here and go</p> <p>20 back to the Red Books themselves and have marked</p> <p>21 as Exhibit 10 what actually ended up being</p> <p>22 excerpts of the 2001 and 2002 Red Book, but I'm</p>	<p>1 into a colloquy with you about this. If you want</p> <p>2 to talk about it off the record, fine, but I</p> <p>3 don't want to waste deposition time on this.</p> <p>4 MR. SWEENEY: I want to know the Red</p> <p>5 Book -- what the source of the document is. And</p> <p>6 if you won't tell me, I'll object.</p> <p>7 MR. GOBENA: Then object.</p> <p>8 BY MR. GOBENA:</p> <p>9 Q. Actually, I mean, I don't want you to</p> <p>10 look at the whole document, I'm only going to ask</p> <p>11 you about the forward on the third page of the</p> <p>12 exhibit.</p> <p>13 MR. GASTWIRTH: And I'll just object on</p> <p>14 the record that this document appears to be</p> <p>15 components of two -- 2002 drug topics from Red</p> <p>16 Book with just portions of these Red Books</p> <p>17 attached here, and I have no idea who compiled</p> <p>18 this document, pulled these pages, I don't know</p> <p>19 if the government did this, we're missing a lot</p> <p>20 of pages.</p> <p>21 MR. GOBENA: This is definitely a</p> <p>22 forward, though, from the 2001 copy. We verified</p>

30 (Pages 114 to 117)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 118	Page 120
<p>1 that, and that's what I'm going to be asking 2 about, so...</p> <p>3 Q. Whenever you've had a chance to read 4 the forward, let me know.</p> <p>5 (Pause)</p> <p>6 A. I'm ready.</p> <p>7 Q. First I wanted to find out whether or 8 not you've had a chance to review the 2001 Red 9 Book prior to -- prior to your deposition today.</p> <p>10 A. I did yesterday.</p> <p>11 Q. And was yesterday the first time you 12 looked at the 2001 Red Book?</p> <p>13 A. Yes.</p> <p>14 Q. And did you have a chance to read the 15 whole thing or parts of it?</p> <p>16 A. I read the forward.</p> <p>17 Q. So you're, at least as of yesterday, 18 familiar with the forward?</p> <p>19 A. Yes.</p> <p>20 Q. Why don't we go through it, and why 21 don't we see if you have any historical knowledge 22 of any of the information contained herein.</p>	<p>1 MR. GASTWIRTH: Objection to form, the 2 document speaks for itself.</p> <p>3 MR. CAHILL: And I was just going to 4 add, outside of communications with counsel.</p> <p>5 MR. GOBENA: Okay, fair enough.</p> <p>6 A. Not outside of communication with 7 counsel.</p> <p>8 Q. But the statement that, you know -- 9 the middle part of that statement that reads, 10 "the average wholesale price designation -- one 11 of several pieces of data that Red Book collects 12 from manufacturers" dash, that excerpt, that's 13 accurate? That is, Red Book has data that's 14 collected -- I'm sorry, the AWP is data that's 15 collected from the manufacturers; correct?</p> <p>16 MR. GASTWIRTH: Objection to form.</p> <p>17 MR. SWEENEY: Objection to form.</p> <p>18 A. Correct.</p> <p>19 Q. The next paragraph reads, "Based on 20 charges that some manufacturers were inflating 21 their wholesale prices to gain a competitive 22 advantage, the Health Care Financing</p>
Page 119	Page 121
<p>1 Let me -- I'm going to -- well, I'll 2 read the first paragraph anyways.</p> <p>3 "Dear Reader: We take considerable 4 pride in presenting this edition of Red Book. It 5 marks the 105th year of publication for this 6 trusted annual companion for pharmacists and 7 other decision makers involved in the provision 8 of pharmaceuticals and pharmaceutical care.</p> <p>9 "Through the decades, the Red Book team 10 of writer, editors, data specialists, researchers 11 and designers has worked hard to produce a 12 valuable reference tool that would meet the many 13 needs of healthcare professionals in the service 14 of their patients. Therefore, we were concerned 15 when the average wholesale price designation -- 16 one of several pieces of data that Red Book 17 collects from manufacturers -- came under fire at 18 federal and state levels this past year."</p> <p>19 Let me ask you first, do you have any 20 knowledge or understanding of what was being 21 referred to there in that last sentence I just 22 read?</p>	<p>1 Administration was prepared to implement new AWP's 2 derived by the Department of Justice for some 3 outpatient drugs covered by Medicare."</p> <p>4 Are you aware of the charges being 5 referred to in this paragraph?</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 Q. Again, outside of counsel -- 8 discussions with counsel.</p> <p>9 A. I am not.</p> <p>10 Q. It goes on to read, "That plan was 11 shelved indefinitely when it became clear that 12 Congress, responding to protests from pharmacy, 13 medical and patient groups, was not going to 14 reduce the current formula. However, some states 15 have recalculated AWP's for certain drugs under 16 Medicaid following a survey of wholesale prices."</p> <p>17 Are you aware of any of the factual 18 events that are stated here in this paragraph?</p> <p>19 MR. GASTWIRTH: Objection to form.</p> <p>20 A. I am not.</p> <p>21 Q. Is there anyone who's currently at 22 Thomson that you think would have had some --</p>

31 (Pages 118 to 121)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 122	Page 124
<p>1 some knowledge of what was being referred to in 2 these paragraphs? 3 MR. GASTWIRTH: Objection to form. 4 MR. CAHILL: Objection to form. 5 A. No one -- this was still done out of 6 the Montvale office, and I am not aware of who 7 was still in the Montvale Thomson office that 8 would have -- that may have had knowledge of 9 this. I am not aware of anyone. 10 Q. At the bottom it looks like the 11 forward was being -- not necessarily signed, but 12 there's a name there at the bottom left that says 13 "Valentine Cardinale," with an E at the end, 14 "editor." 15 Is Miss Cardinale still employed by 16 Thomson? 17 A. I do not have knowledge. I do not 18 recognize that name. I have no history with that 19 person. 20 Q. Let's read the next paragraph and see 21 if you have any knowledge about what's contained 22 therein.</p>	<p>1 the Red Book itself? 2 MR. GASTWIRTH: Objection to form. 3 A. Are you asking about -- I guess I 4 don't understand. 5 Q. Let me change it, that was an awkward 6 question. 7 It says in the sentence basically great 8 care is exercised in compiling the data that's in 9 the Red Book. 10 Do you see that? 11 A. Yes. 12 Q. Do you agree that great care was 13 exercised in compiling the data? 14 A. Yes. 15 Q. And what great care was exercised in 16 making sure that the data was as accurate as Red 17 Book's staff could possibly get it to be? 18 MR. GASTWIRTH: Objection to form. 19 A. My belief is what they're referring to 20 is the process they had as far as entering the 21 content and then -- the pricing information and 22 dates and then that being verified or double</p>
Page 123	Page 125
<p>1 It starts, "As noted in the 'Rx product 2 listing section,' all prices are current as of 3 the date Red Book went to press and are based on 4 data obtained from manufacturers, distributors 5 and other suppliers." Stop there. 6 Based on your knowledge, is that a 7 correct description of how Red Book was 8 collecting the pricing data in this -- in or 9 around 2001? 10 MR. GASTWIRTH: Objection to form. 11 A. Yes. Again, going back to my previous 12 definition of what a distributor and supplier 13 was; as long as they were packaging the product. 14 Q. Okay. 15 The next sentence reads, "While we 16 cannot vouch for the accuracy of all pricing 17 information, great care has been exercised in 18 compiling the data." 19 Let me stop there. 20 Is that an accurate statement of the 21 effort that Red Book went through to compile data 22 -- Red Book staff went through to compile data in</p>	<p>1 checked, if you want to call it that, by another 2 staff person. 3 Q. Is that also a reference to the 4 product listing verification process that we were 5 talking about a little bit earlier? 6 MR. GASTWIRTH: Objection. 7 A. All prices were double checked -- 8 entered by one person and double checked by 9 another. 10 Q. What do you mean by "double checked"? 11 I just want to make sure we're clear on that. 12 A. One person would enter the information 13 into the system, and then hand it off to someone 14 else, who would then just verify that the correct 15 price and date were entered, as listed on the PLV 16 or whatever communication we received from the 17 manufacturer. 18 Q. Part of that double checking process 19 was going back to the manufacturer and double 20 checking that the AWP listed for their product 21 was accurate? 22 MR. GASTWIRTH: Objection to form.</p>

32 (Pages 122 to 125)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 126	Page 128
<p>1 A. No, the double checking was just that</p> <p>2 it was entered as it was given to the staff.</p> <p>3 Q. By the manufacturers?</p> <p>4 A. By the manufacturer.</p> <p>5 Q. The next sentence reads, "We continue</p> <p>6 to regard AWP as one guideline in the Rx pricing</p> <p>7 mix and to encourage the provision and</p> <p>8 dissemination of fair, accurate prices by all</p> <p>9 suppliers."</p> <p>10 What's -- who are the suppliers that</p> <p>11 are being referenced in that sentence, to the</p> <p>12 best of your knowledge?</p> <p>13 MR. CAHILL: If you know.</p> <p>14 Q. If you know.</p> <p>15 A. I would assume, again, suppliers</p> <p>16 meaning the people who are supplying the</p> <p>17 information.</p> <p>18 Q. And that being the --</p> <p>19 A. Being a manufacturer or a repackager.</p> <p>20 Q. So the statement here, then, by Miss</p> <p>21 Cardinale is that she's encouraging manufacturers</p> <p>22 to disseminate fair and accurate prices; is that</p>	<p>1 witness to my colleague, Jarrett Anderson, who's</p> <p>2 going to ask some questions.</p> <p>3 Our goal on the plaintiff side is to</p> <p>4 ask questions as quickly as possible, to reserve</p> <p>5 some time at the end of the day for defendants to</p> <p>6 be able to ask questions. And if it's not</p> <p>7 enough, we'll have to take it up.</p> <p>8 I do have a conflict tomorrow, I don't</p> <p>9 know about other counsel here, what their</p> <p>10 situation is, but we can work that out later on.</p> <p>11 Our goal is to try and move this as quickly as</p> <p>12 possible. For that purpose I'll pass the witness</p> <p>13 now to my colleague.</p> <p>14 We are hopeful that we can get this</p> <p>15 entire deposition finished today.</p> <p>16 MR. SWEENEY: And we agree with that,</p> <p>17 but a number of defendants do have questions, and</p> <p>18 plaintiffs' counsel originally saying they were</p> <p>19 going to go until three or four o'clock, which</p> <p>20 would put us in a bind, that's why we discussed</p> <p>21 tomorrow.</p> <p>22 And so you're done for the moment, in</p>
Page 127	Page 129
<p>1 a fair sort of summary of what she's saying</p> <p>2 there?</p> <p>3 MR. GASTWIRTH: Objection to form. The</p> <p>4 document speaks for itself.</p> <p>5 A. It's an assumption I would make.</p> <p>6 MR. GOBENA: Why don't we go off the</p> <p>7 record here for a second.</p> <p>8 THE VIDEOGRAPHER: This is the</p> <p>9 videographer.</p> <p>10 Off the record, 11:03.</p> <p>11 (Recess taken)</p> <p>12 THE VIDEOGRAPHER: This is the</p> <p>13 videographer.</p> <p>14 The time is 11:12. We're back on the</p> <p>15 record.</p> <p>16 MR. GOBENA: I realize that there are a</p> <p>17 variety of people here who want to ask questions</p> <p>18 of this witness and we only have one day</p> <p>19 identified in the notice. I don't know whether</p> <p>20 people are going to be seeking an additional day</p> <p>21 down the road, but for the sake of efficiency</p> <p>22 what I'm going to do at this point is pass the</p>	<p>1 other words?</p> <p>2 MR. GOBENA: I'm reserving the right to</p> <p>3 ask questions later on, but for right now I'm</p> <p>4 done.</p> <p>5 MR. SWEENEY: Okay.</p> <p>6 MR. ANDERSON: And we're all going to</p> <p>7 try to move quickly, and hopefully we will finish</p> <p>8 this today and y'all will have plenty of time to</p> <p>9 ask your questions.</p> <p>10 EXAMINATION</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Good morning, ma'am.</p> <p>13 A. Good morning.</p> <p>14 Q. How are you?</p> <p>15 A. Fine.</p> <p>16 Q. My name's Jarrett Anderson, I</p> <p>17 represent a plaintiff in this case, Ven-A-Care of</p> <p>18 the Florida Keys.</p> <p>19 I understand from your testimony this</p> <p>20 morning that over the years Red Book has taken</p> <p>21 steps to verify the prices that it publishes for</p> <p>22 drugs; correct?</p>

33 (Pages 126 to 129)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 130	Page 132
<p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 A. Correct.</p> <p>3 Q. And that primary mechanism for price</p> <p>4 verification is through what's known as a PLV,</p> <p>5 price listing verification form; correct?</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 A. Correct.</p> <p>8 Q. And those were forms that were</p> <p>9 presented annually by Red Book staff and</p> <p>10 transmitted to drug manufacturers --</p> <p>11 MR. GASTWIRTH: Objection to form.</p> <p>12 Q. -- correct?</p> <p>13 A. Correct.</p> <p>14 Q. Was that historically, I'm assuming,</p> <p>15 back in the '90 -- early '90s, for which is part</p> <p>16 of the time period that you're here today as the</p> <p>17 corporate representative, I take it those were</p> <p>18 transmitted by mail; correct?</p> <p>19 A. I'm assuming. I know that today they</p> <p>20 are still transmitted by hard copy mail.</p> <p>21 Q. All right. Well, you kind of</p> <p>22 anticipated my next question.</p>	<p>1 A. Okay.</p> <p>2 Q. Does Red Book rely upon the</p> <p>3 verifications signified by the signatures by drug</p> <p>4 manufacturers in publishing drug pricing</p> <p>5 information?</p> <p>6 MR. GASTWIRTH: Objection to form.</p> <p>7 MR. CAHILL: Objection to form.</p> <p>8 A. Yes.</p> <p>9 (Document bearing Bates Nos. TH 0598</p> <p>10 through 0601 marked Exhibit Minne 011 for</p> <p>11 identification.)</p> <p>12 Q. Miss Minne, if you could take a look</p> <p>13 at what's been marked as deposition Exhibit 11.</p> <p>14 MR. GASTWIRTH: We're on 12.</p> <p>15 MR. ANDERSON: The next sticker in line</p> <p>16 was 11.</p> <p>17 MS. ROSENSTOCK: It's 11.</p> <p>18 MR. GASTWIRTH: It's 11? Sorry about</p> <p>19 that.</p> <p>20 MR. ANDERSON: That's okay.</p> <p>21 (Pause)</p> <p>22 BY MR. ANDERSON:</p>
Page 131	Page 133
<p>1 Are they only transmitted by mail or</p> <p>2 are they also transmitted electronically?</p> <p>3 A. They are printed in our Denver office</p> <p>4 and transmitted by hard copy mail, U.S. mail.</p> <p>5 Q. And Red Book in turn expects to</p> <p>6 receive hard copies back?</p> <p>7 A. Correct.</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 Q. Why is it that Red Book desires to</p> <p>10 receive hard copies of the completed verification</p> <p>11 forms from drug manufacturers?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 A. They would like the -- that the bottom</p> <p>14 of the PLV is signed by a representative of the</p> <p>15 company.</p> <p>16 Q. Does Red Book rely upon the</p> <p>17 manufacturer's signature of the verification</p> <p>18 forms in Red Book's publication of pricing</p> <p>19 information?</p> <p>20 MR. GASTWIRTH: Objection to form.</p> <p>21 A. I don't understand your question.</p> <p>22 Q. I'll rephrase.</p>	<p>1 Q. Do you recognize this type of</p> <p>2 document?</p> <p>3 A. Only since yesterday.</p> <p>4 MR. FARQUHAR: Mr. Anderson, I'm sorry,</p> <p>5 for the rest of us, could you please describe</p> <p>6 what the document is?</p> <p>7 MR. ANDERSON: Sure, it's a four-page</p> <p>8 document, Bates labeled TH 0598 through 0601, it</p> <p>9 appears to be a description of general</p> <p>10 information concerning Red Book and Red Book</p> <p>11 circulation.</p> <p>12 MR. FARQUHAR: Does it have a date?</p> <p>13 MR. ANDERSON: It appears it's back</p> <p>14 from the early '90s -- I mean, pardon me,</p> <p>15 mid-'90s.</p> <p>16 MR. FARQUHAR: Thank you.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. What is this document?</p> <p>19 A. It appears to be some type of</p> <p>20 marketing information.</p> <p>21 Q. Marketing information that Red Book</p> <p>22 would provide to potential subscribers or</p>

34 (Pages 130 to 133)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 134	Page 136
<p>1 existing subscribers?</p> <p>2 MR. GASTWIRTH: Objection to form.</p> <p>3 A. Probably to advertisers.</p> <p>4 Q. To -- oh, I see, okay. Because -- is</p> <p>5 it true that Red Book, in addition to selling</p> <p>6 information, such as the electronic or printed</p> <p>7 publications of information, also placed</p> <p>8 advertisements in those publications?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. And in turn sold those -- that space</p> <p>11 for those advertisements to advertisers; correct?</p> <p>12 A. That is my understanding.</p> <p>13 Q. Including drug manufacturers?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 A. That is my understanding.</p> <p>16 Q. And so Exhibit 11 appears to you to be</p> <p>17 some marketing materials that Red Book would have</p> <p>18 provided to potential advertisers; is that right?</p> <p>19 MS. CITERA: Objection to form.</p> <p>20 A. That is what it appears to be.</p> <p>21 Q. All right, now, focusing your</p> <p>22 attention on the third page of Exhibit 11, I see</p>	<p>1 from, so I cannot verify whether they are</p> <p>2 accurate or not.</p> <p>3 Q. Well, I'm not asking you to verify</p> <p>4 them, I'm asking you do you have any reason to</p> <p>5 question the accuracy of the data?</p> <p>6 A. I have no reason to question the</p> <p>7 accuracy --</p> <p>8 MS. CITERA: Objection to form.</p> <p>9 A. -- of these circulation numbers.</p> <p>10 Q. Is it true that over the years many</p> <p>11 independent drugstores have subscribed to Red</p> <p>12 Book?</p> <p>13 A. That is true.</p> <p>14 Q. Is it true that over the years many</p> <p>15 chain drugstores have subscribed to Red Book?</p> <p>16 A. That is true.</p> <p>17 Q. I also notice that you have, in</p> <p>18 Exhibit 11, a reference to 2300 manufacturers</p> <p>19 receiving Red Book.</p> <p>20 Is that what's shown in Exhibit 11?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Is that generally consistent with your</p>
Page 135	Page 137
<p>1 toward the upper portion of the document there's</p> <p>2 some circulation statistics by classification;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And the number of independent</p> <p>6 drugstores is listed as over 34,000; is that</p> <p>7 right?</p> <p>8 A. That's what's listed.</p> <p>9 Q. Is that consistent with your</p> <p>10 understanding as the corporate representative of</p> <p>11 Red Book that independent drugstores, somewhere</p> <p>12 in the range of 34,000 stores, received Red Book?</p> <p>13 MR. GASTWIRTH: Objection to form.</p> <p>14 A. I can't verify that number of 34,000,</p> <p>15 but it is my understanding that that's who they</p> <p>16 are advertising to or marketing, yes.</p> <p>17 Q. And you have no reason to distrust or</p> <p>18 otherwise question the accuracy of the</p> <p>19 circulation numbers that are set forth in Exhibit</p> <p>20 11, do you?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 A. I do not know where these numbers came</p>	<p>1 understanding as the corporate representative of</p> <p>2 Red Book?</p> <p>3 MR. GASTWIRTH: Objection to form.</p> <p>4 A. Yes, it is.</p> <p>5 MR. CAHILL: For this period of time,</p> <p>6 though.</p> <p>7 THE WITNESS: For this period of time.</p> <p>8 MR. CAHILL: In other words, the</p> <p>9 circulation numbers are tied back into the period</p> <p>10 of time of Exhibit 11.</p> <p>11 MR. ANDERSON: I appreciate that.</p> <p>12 Q. Which appears to be sometime in '94 or</p> <p>13 '95?</p> <p>14 A. Correct.</p> <p>15 Q. Likewise, there's government agencies</p> <p>16 listed as classification of subscribers; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And it appears that over 1300</p> <p>19 government agencies are subscribing to Red Book</p> <p>20 information; is that true?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 A. That's what it states.</p>

35 (Pages 134 to 137)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

<p style="text-align: right;">Page 138</p> <p>1 Q. And isn't it true that for all of</p> <p>2 these different classifications of subscribers,</p> <p>3 whether they be independent drugstores or chain</p> <p>4 drugstores or manufacturers or government</p> <p>5 agencies, they would be receiving the pricing</p> <p>6 information that Red Book supplied in addition to</p> <p>7 the other NDC-related information?</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 A. Correct.</p> <p>10 Q. Including AWP information; correct?</p> <p>11 MR. GASTWIRTH: Objection to form.</p> <p>12 A. If AWP is listed, yes.</p> <p>13 Q. And now, if you could, I'd like you to</p> <p>14 take a look at what's going to be marked as</p> <p>15 Exhibit 12.</p> <p>16 (Document bearing Bates Nos. TH 0256</p> <p>17 through 0262 marked Exhibit Minne 012 for</p> <p>18 identification.)</p> <p>19 MR. ANDERSON: For the record, Exhibit</p> <p>20 12 is Bates labeled TH 0256 through 0262. It's</p> <p>21 titled "1994 Red Book, Pharmacy's Fundamental</p> <p>22 Resource."</p>	<p style="text-align: right;">Page 140</p> <p>1 is what it appears, yes.</p> <p>2 Q. Now, if you could, I'd like you to</p> <p>3 focus on the third page of Exhibit 12, and I had</p> <p>4 it folded there for you.</p> <p>5 A. Thank you.</p> <p>6 Q. It's -- toward the bottom of the page,</p> <p>7 I'm focusing on the section that's titled "Get</p> <p>8 the maximum return on third-party claims."</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Reading for the record, "The Red Book</p> <p>12 Update average wholesale price has become the</p> <p>13 standard for many large insurance companies,</p> <p>14 state and local governments and drug benefit</p> <p>15 plans. Pharmacists everywhere use the update to</p> <p>16 find the latest drug price changes before they</p> <p>17 file a reimbursement claim, thus maximizing the</p> <p>18 return on third-party payments."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes, you did.</p> <p>21 Q. As the Red Book corporate</p> <p>22 representative, is that information accurate?</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Does this type of document look</p> <p>2 familiar to you, Miss Minne?</p> <p>3 A. I saw this type of document only as of</p> <p>4 yesterday.</p> <p>5 Q. And what is it?</p> <p>6 A. This appears, again, to be some type</p> <p>7 of marketing information.</p> <p>8 Q. Marketing information that would have</p> <p>9 been provided to potential subscribers or</p> <p>10 potential advertisers or both?</p> <p>11 A. This is --</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 A. -- would be to potential subscribers</p> <p>14 of the product.</p> <p>15 Q. So a slightly different focus on this</p> <p>16 marketing material than what we saw in Exhibit</p> <p>17 11?</p> <p>18 MR. GASTWIRTH: Objection to form, and</p> <p>19 I'll object to the leading nature of your</p> <p>20 questions to this witness.</p> <p>21 Q. Is that correct?</p> <p>22 A. That is what it would appear -- that</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 A. At the time it would have been</p> <p>3 accurate.</p> <p>4 Q. And again, this is dated 1994;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. To the extent a drug manufacturer</p> <p>8 would verify or otherwise report AWP's that were</p> <p>9 higher than competitive products' AWP's, would</p> <p>10 that provide a reimbursement maximization</p> <p>11 potential for customers?</p> <p>12 MR. GASTWIRTH: Objection to form, and</p> <p>13 may I hear the question back, please.</p> <p>14 MR. CAHILL: Objection to form as well.</p> <p>15 MR. ANDERSON: I'll rephrase it.</p> <p>16 Q. Miss Minne, do you understand that</p> <p>17 subscribers to Red Book, such as pharmacies,</p> <p>18 could maximize reimbursement by dispensing one</p> <p>19 generic that had an AWP much higher than a</p> <p>20 competitive product's AWP?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 MS. KAPLAN: Objection to form.</p>

36 (Pages 138 to 141)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 142	Page 144
<p>1 A. I -- I have no knowledge of how 2 pharmacies dispense their products. 3 Q. What is your understanding of the 4 statement provided by Red Book in Exhibit 12 5 concerning maximization of reimbursement? 6 MR. GASTWIRTH: Objection to form. 7 A. My understanding is they are talking 8 about the Red Book Update, which is a monthly 9 supplement to the annual published book, and the 10 way I interpret what they're saying is that by 11 getting the update they will see that prices have 12 changed throughout the year, so that when they 13 submit a claim, they can use the most current 14 price, which may have well been what they paid 15 for it as well. 16 Q. All right. And accordingly, for 17 instance, if the Red Book Update for a given 18 month happens to reflect an AWP increase taken by 19 a manufacturer, would that provide a mechanism in 20 Red Book's understanding for a pharmacy to 21 maximize reimbursement? 22 MR. GASTWIRTH: Objection to form,</p>	<p>1 ma'am? 2 MS. KAPLAN: Could you describe it 3 again? 4 MR. ANDERSON: Yeah, it's a single-page 5 exhibit, Bates labeled RGX 0189707, it's a Red 6 Book form letter dated July 16th, 1999 to "Dear 7 Pharmaceutical Manufacturer." 8 MS. KAPLAN: Thank you. 9 MR. SWEENEY: What are the Bates 10 numbers on this? Where did this come from? 11 MR. ANDERSON: Ropes & Gray for 12 Schering Warrick and Schering Plough. 13 MR. GASTWIRTH: Can we just -- off the 14 record? Could we just get a couple copies of 15 this document? 16 MR. ANDERSON: Sure. You want to go 17 off the record now and -- 18 MR. GASTWIRTH: Yeah, that might be -- 19 THE VIDEOGRAPHER: Off the record at 20 11:29. 21 (Pause) 22 THE VIDEOGRAPHER: This is the</p>
Page 143	Page 145
<p>1 calls for speculation. 2 MR. CAHILL: If you understand. 3 A. Again, how a pharmacy would submit 4 their claim and what price they would use to 5 submit that claim is not within the control of 6 Red Book. 7 Q. I recognize it's not within your 8 control. I'm asking is that within the 9 understanding of Red Book as to how a pharmacy 10 could maximize reimbursement. 11 MR. GASTWIRTH: Objection to form, 12 calls for speculation. 13 A. Yes. 14 (Document bearing Bates No. RGX 0189707 15 marked Exhibit Minne 013 for identification.) 16 Q. Miss Minne, if you could take a look 17 at what's been marked as Exhibit 13. 18 MR. ANDERSON: I apologize, I'm a 19 little short on extra copies of this one. 20 Q. It's a one-page document, Bates 21 labeled RGX 0189707. 22 Do you recognize this type of document,</p>	<p>1 videographer. 2 Back on the record at 11:31. 3 MR. ANDERSON: Everyone has copies now. 4 BY MR. ANDERSON: 5 Q. Miss Minne, have you had a chance to 6 review Exhibit 13? 7 A. Yes, I have. 8 Q. Are you familiar with this type of 9 document? 10 A. Yes, I am. 11 Q. What is it? 12 A. It is a cover letter to the PLV that 13 is sent out annually. 14 Q. And I appreciate your acronym for the 15 PLV, and that's what's known as the product 16 listing verification forms; correct? 17 A. Correct. 18 Q. For ease of reference, I may refer to 19 them as the verification forms. 20 Is that okay? 21 A. Yes. 22 Q. So this is a standard letter that</p>

37 (Pages 142 to 145)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 146	Page 148
<p>1 would have gone out to pharmaceutical companies</p> <p>2 with the printed verification forms annually from</p> <p>3 Red Book; correct?</p> <p>4 MR. GASTWIRTH: Objection to form.</p> <p>5 A. Correct.</p> <p>6 Q. And why did Red Book send cover</p> <p>7 letters such as Exhibit 13 to manufacturers?</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 A. It provided some direction on what was</p> <p>10 in the packet that was, you know, being sent, and</p> <p>11 also on how to complete the information.</p> <p>12 Q. And was this type of letter one</p> <p>13 mechanism by which Red Book was trying to ensure</p> <p>14 the accuracy of the published pricing</p> <p>15 information?</p> <p>16 MR. GASTWIRTH: Objection to form.</p> <p>17 A. It was a --</p> <p>18 MR. ANDERSON: What's the basis for the</p> <p>19 objection?</p> <p>20 MR. GASTWIRTH: Can I hear the question</p> <p>21 back, please.</p> <p>22 MR. ANDERSON: Well, you should know</p>	<p>1 Accurate as to what?</p> <p>2 MR. FARQUHAR: And it's a leading</p> <p>3 question.</p> <p>4 MR. ANDERSON: I would ask that if</p> <p>5 someone's going to pose an objection, they need</p> <p>6 to have the basis set forth, and they need to be</p> <p>7 ready to explain that objection. And, frankly,</p> <p>8 even after you had the question read back, the</p> <p>9 basis for your objection is not valid.</p> <p>10 MR. GASTWIRTH: The federal rules --</p> <p>11 MS. TORGERSON: Jarrett, you're not the</p> <p>12 judge, okay. Let's stop this, we're wasting the</p> <p>13 witness' time. You're not the judge, we will</p> <p>14 object as proper under the federal rules.</p> <p>15 MR. ANDERSON: As long as they are</p> <p>16 well-founded.</p> <p>17 MS. TORGERSON: We will make the</p> <p>18 objections we will make. You are not the judge.</p> <p>19 Please continue with your questions.</p> <p>20 MR. ANDERSON: I'd like my question</p> <p>21 answered, as a matter of fact.</p> <p>22 MR. GASTWIRTH: And I'll note my</p>
Page 147	Page 149
<p>1 the basis without hearing the question.</p> <p>2 MR. GASTWIRTH: I want to base my</p> <p>3 objection --</p> <p>4 MR. ANDERSON: I think, frankly, you're</p> <p>5 just doing knee jerk objections without any</p> <p>6 foundation.</p> <p>7 MR. GASTWIRTH: That is not correct,</p> <p>8 Counsel.</p> <p>9 MR. ANDERSON: Well, provide the basis.</p> <p>10 MR. GASTWIRTH: You asked me to provide</p> <p>11 a basis, I'm asking to hear the question.</p> <p>12 MR. ANDERSON: Well, fire away.</p> <p>13 MS. TORGERSON: Let's read it back.</p> <p>14 (Record read)</p> <p>15 MR. GASTWIRTH: And I'll object because</p> <p>16 the witness has not established in her prior</p> <p>17 testimony that Red Book has attempted to</p> <p>18 establish accurate pricing through any</p> <p>19 communications that they sent out to anybody.</p> <p>20 MS. TORGERSON: And in addition to</p> <p>21 that, the term that you're using, "accurate" is</p> <p>22 vague and ambiguous.</p>	<p>1 objection.</p> <p>2 MR. CAHILL: We'll have the question</p> <p>3 read back.</p> <p>4 MR. GASTWIRTH: Again.</p> <p>5 (Record read)</p> <p>6 A. Yes, it was a mechanism by which we</p> <p>7 were trying to get the most current prices from</p> <p>8 the manufacturer.</p> <p>9 Q. And looking in the first sentence</p> <p>10 that's in bold and offset, Red Book writes, "Dear</p> <p>11 Pharmaceutical Manufacturer: Help us update your</p> <p>12 free product listings in the 2000 Red Book to</p> <p>13 ensure they are as comprehensive and accurate as</p> <p>14 possible."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes, you did.</p> <p>17 Q. What type of accuracy was Red Book</p> <p>18 seeking?</p> <p>19 MR. GASTWIRTH: Objection to form.</p> <p>20 A. Accuracy that the NDCs are correct,</p> <p>21 the product name is correct, the prices are</p> <p>22 listed as the manufacturer wanted us to, the</p>

38 (Pages 146 to 149)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 150	Page 152
<p>1 effective date was -- was as the manufacturer 2 wanted us to list it as well. 3 Q. So as to pricing, the accuracy was 4 completely dependent on the drug manufacturer; 5 correct? 6 MR. GASTWIRTH: Objection to form. 7 MR. SWEENEY: Objection to form. 8 A. Yes. 9 Q. Looking down toward the middle of the 10 document, there's a paragraph that begins with 11 the word "complete." And I'll read for the 12 benefit of the record -- are you with me? 13 A. Yes, I am. 14 Q. Okay, thank you. 15 "Complete and up-to-date WAC (wholesale 16 acquisition cost) pricing is also requested for 17 our electronic database." 18 Did I read that correctly? 19 A. Yes, you did. 20 Q. Is it true that over the years Red 21 Book has published WAC pricing in its electronic 22 database?</p>	<p>1 Q. And then the closing sentence in this 2 form letter from Red Book to drug companies says, 3 "Thank you for your assistance and we look 4 forward to continuing a successful partnership in 5 maintaining the most up-to-date and accurate 6 listing for your company in the Red Book." 7 Did I read that correctly? 8 A. Yes, you did. 9 Q. And is that a true statement as to Red 10 Book's efforts over the years to maintain 11 accurate pricing? 12 MR. GASTWIRTH: Objection to form. The 13 document speaks for itself. 14 A. Accurate as far as -- that's what the 15 manufacturer wants us to list. 16 Q. And to your knowledge, as the Red Book 17 representative, this type of form letter would 18 have gone out to all drug companies having their 19 NDC numbers published by Red Book from 1990 to 20 the present; correct? 21 MR. GASTWIRTH: Objection. 22 A. Correct.</p>
Page 151	Page 153
<p>1 A. Yes, it has. 2 Q. And that, again, was pricing that was 3 derived from manufacturers; correct? 4 A. That was received -- 5 MR. GASTWIRTH: Objection to form. 6 A. -- from manufacturers, correct. 7 Q. And annually verified by drug 8 manufacturers; correct? 9 MR. GASTWIRTH: Objection to form. 10 A. Correct. 11 MR. ANDERSON: Ma'am, I appreciate your 12 answers, but if you could just hesitate a split 13 second because there are objections being lodged 14 and that way your answer's not drowned out by the 15 objection, okay. 16 THE WITNESS: Okay. 17 Q. Your last answer was yes; correct? 18 A. My last answer was correct, yes. 19 Yes, you are correct, my last answer 20 was yes. 21 MR. ANDERSON: All right. We could do 22 a Laurel and Hardy routine...</p>	<p>1 (Document bearing Bates Nos. RGX 2 0189708 through 0189712 marked Exhibit Minne 014 3 for identification.) 4 Q. Now, if you could, Miss Minne, take a 5 look at what's been marked as Exhibit 14. 6 MS. CITERA: Jarrett, could you just 7 describe it? 8 MR. ANDERSON: Well, I've given my copy 9 to defense counsel for the moment. 10 It's a -- I think it's five pages, 11 Bates labeled RGX 0189708 through 712. It appears 12 to be a document titled "Manufacturer Directory 13 Information Form," and then the next pages are 14 some instructions. 15 MS. TORGERSON: Can we take a break and 16 get a copy? 17 MR. ANDERSON: Why don't we -- 18 MS. TORGERSON: Is now a good time to 19 break for lunch and make copies? 20 MR. SWEENEY: Let's just make copies of 21 everything you've got so we won't have to do it 22 every time.</p>

39 (Pages 150 to 153)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 154	Page 156
<p>1 MR. ANDERSON: Let's take a lunch break 2 and we'll try to make copies of everything. 3 THE VIDEOGRAPHER: This is the 4 videographer. 5 Off the record at 11:39. End of tape 6 two. 7 (Luncheon recess: 11:39 a.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 companies; correct? 2 A. Correct. 3 Q. All right. And looking at the third 4 page of Exhibit 14, it appears that there are 5 some instructions set forth; is that correct? 6 A. Correct. 7 Q. And Mr. Gobena with the Department of 8 Justice walked you through one of the PLVs 9 earlier, and this is a document that basically 10 provides information about how manufacturers 11 should complete or verify the PLVs; correct? 12 A. Correct. 13 Q. Looking at the middle of the page, 14 there's a kind of depiction of a screenshot or a 15 page of a PLV, and I'm focusing your attention, 16 ma'am, on the field that's titled "AWP." 17 Do you see it? 18 A. Yes, I do. 19 Q. And then there's a parenthetical there 20 that says "required." What is meant by that? 21 A. At this time -- this was from 2000. 22 At the time the database where these prices were</p>
Page 155	Page 157
<p>1 AFTERNOON SESSION 2 12:49 p.m. 3 THE VIDEOGRAPHER: This begins tape 4 number three at 12:49. We're back on the record 5 at this time. 6 KRISTEN MINNE, having been 7 previously duly sworn, was examined and testified 8 further as follows: 9 EXAMINATION (Continued) 10 BY MR. ANDERSON: 11 Q. Welcome back from lunch, Miss Minne. 12 Have you had a chance to review Exhibit 13 14? 14 A. Yes, I have. 15 Q. And are you familiar with this type of 16 document? 17 A. Yes, I am. 18 Q. What is it? 19 A. It is again some information that is 20 sent out with a PLV. 21 Q. And the PLVs are the verification 22 forms that Red Book would send to direct</p>	<p>1 entered required an AWP price. 2 Q. Why did Red Book require manufacturers 3 to report AWP's? 4 MR. LONERGAN: Object to the form. 5 MS. CITERA: Object to the form. 6 A. I do not know why the database was set 7 up that way. 8 Q. To your knowledge, did drug 9 manufacturers report AWP? 10 MR. LONERGAN: Objection to form. 11 MR. SWEENEY: Objection to form. 12 MS. CITERA: Objection to form. 13 A. To the best of my knowledge, they did. 14 Q. And when you say "my knowledge," you 15 mean -- 16 A. My historical knowledge. 17 Q. As Red Book's corporate 18 representative? 19 MS. TORGERSON: Objection, form. 20 A. Of the year 2000. 21 Q. Only for that year, or as best you can 22 testify for the time period for which you've been</p>

40 (Pages 154 to 157)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 158	Page 160
<p>1 noticed as the corporate representative?</p> <p>2 MS. TORGERSON: Objection to form.</p> <p>3 MR. SWEENEY: Object to the form.</p> <p>4 Only for that time period what?</p> <p>5 MR. ANDERSON: It's from 1990 to the</p> <p>6 present.</p> <p>7 A. For the time period prior to 2002,</p> <p>8 when I was not involved with the Red Book data.</p> <p>9 Q. I see. So prior to 2002 -- for the</p> <p>10 time period prior to 2002 you are testifying on</p> <p>11 behalf of Red Book; correct?</p> <p>12 A. Correct.</p> <p>13 Q. All right. And you do understand that</p> <p>14 prior to 2002 drug manufacturers were reporting</p> <p>15 AWP information to Red Book?</p> <p>16 MS. TORGERSON: Objection.</p> <p>17 MR. SWEENEY: Objection to form.</p> <p>18 A. That is my understanding.</p> <p>19 Q. And in turn that reported AWP</p> <p>20 information was being published by Red Book?</p> <p>21 MS. TORGERSON: Object to the form.</p> <p>22 MR. SWEENEY: Object to the form.</p>	<p>1 be calculated using the same formula.</p> <p>2 Q. Did Red Book experience manufacturers</p> <p>3 choosing to not publish an AWP, or refuse to</p> <p>4 publish an AWP in the early 2000s?</p> <p>5 MS. TORGERSON: Objection to form.</p> <p>6 A. Yes.</p> <p>7 Q. And was that a relatively new</p> <p>8 experience in Red Book's business practices?</p> <p>9 MR. SWEENEY: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any understanding as the</p> <p>12 Red Book corporate representative as to why some</p> <p>13 drug manufacturers were refusing to publish AWP?</p> <p>14 MS. TORGERSON: Objection, form.</p> <p>15 MR. SWEENEY: Objection, foundation.</p> <p>16 A. I do not know why they would not</p> <p>17 supply AWP.</p> <p>18 Q. Did Red Book communicate to drug</p> <p>19 manufacturers the standard markup that Red Book</p> <p>20 would utilize to publish an AWP when drug</p> <p>21 companies refused to report AWP?</p> <p>22 MR. CAHILL: Under the new policy?</p>
Page 159	Page 161
<p>1 A. Correct.</p> <p>2 Q. Now, there's been some mention today</p> <p>3 of what's known as an AWP policy that was</p> <p>4 implemented; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that policy was implemented</p> <p>7 sometime around 2002?</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 A. Very early in 2003.</p> <p>10 Q. Very early -- okay.</p> <p>11 Can you provide a brief description of</p> <p>12 what the Red Book AWP policy is that was</p> <p>13 instituted in early 2003?</p> <p>14 A. The policy states that in a case where</p> <p>15 a manufacturer will not supply an AWP, that Red</p> <p>16 Book will calculate an AWP using a percentage</p> <p>17 markup from WAC or direct.</p> <p>18 Q. And how does Red Book ascertain that</p> <p>19 percentage markup?</p> <p>20 A. The policy is just a -- it's the same</p> <p>21 for every manufacturer. So every manufacturer</p> <p>22 who will not supply it will -- their prices will</p>	<p>1 MR. ANDERSON: Yes.</p> <p>2 A. Under the new policy, yes.</p> <p>3 Q. Why did Red Book notify manufacturers</p> <p>4 of the markup?</p> <p>5 A. It allowed manufacturers a chance to</p> <p>6 -- if they didn't like what we were going to</p> <p>7 publish, it still allowed them an opportunity to</p> <p>8 provide it to us if they chose.</p> <p>9 Q. And did some drug manufacturers choose</p> <p>10 to report an AWP rather than allow Red Book to</p> <p>11 utilize the markup?</p> <p>12 A. I am not aware of any.</p> <p>13 Q. So as a general matter, as the Red</p> <p>14 Book corporate representative, Red Book's</p> <p>15 experience was that if a manufacturer refused to</p> <p>16 publish an AWP, they would allow Red Book to</p> <p>17 utilize the markup in setting the AWP?</p> <p>18 MR. GASTWIRTH: Objection, form.</p> <p>19 MR. SWEENEY: Object to the form.</p> <p>20 A. Correct.</p> <p>21 (Document bearing Bates Nos. TH 353</p> <p>22 marked Exhibit Minne 015 for identification.)</p>

41 (Pages 158 to 161)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 162

1 Q. If you could, take a moment and review
2 the one-page exhibit marked Minne Exhibit 15,
3 Bates labeled TH 353.

4 (Pause)

5 Q. Have you had an opportunity to review
6 this e-mail?

7 A. Yes.

8 Q. And does this appear to be an e-mail
9 written by Michael Soares to Lauri Moore, with
10 copies to you and Karen Eckert, around October
11 14th, 2002?

12 MR. CAHILL: Objection.

13 I think it's the other way around.

14 THE WITNESS: Yeah.

15 MR. ANDERSON: Oh, pardon. I might
16 have misspoke, I'll rephrase to address that.

17 Q. Does this appear to be an e-mail
18 written by Lauri Moore to Michael Soares, with
19 copies to you and Karen Eckert, around October
20 14th, 2002?

21 A. Yes.

22 Q. And the subject is "AWP Policy";

Page 163

1 correct?

2 A. Correct.

3 Q. And it sets forth some information
4 about Red Book's experience with drug
5 manufacturers reporting AWP; correct?

6 A. Correct.

7 MR. SWEENEY: Object to the form.

8 Q. Specifically in the first paragraph it
9 describes how AWP used to be a required element;
10 correct?

11 A. Correct.

12 Q. And NDCs would not be added to the
13 database without AWP information; is that right?

14 MR. SWEENEY: Object to the form.

15 A. Correct.

16 Q. And is that true?

17 A. To the best of my knowledge, I was not
18 involved with these products at that point that
19 that was a requirement.

20 Q. I see.

21 Do you -- reading the next sentence in
22 that paragraph, it reads, "At the request of

Page 164

1 Micromedex, the system was changed to make AWP an
2 optional data element."

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. Did you, as Red Book's corporate
6 representative, understand why AWP was made an
7 optional data element?

8 A. Yes, I do.

9 Q. Why?

10 A. The Red Book database, the NDCs that
11 are in the Red Book database, are used for
12 clinical screening on products. So if an AWP was
13 required but we could not get an AWP, then we
14 couldn't enter that NDC into the database. So
15 that product could not be screened for such
16 things as drug interactions and drug allergies.

17 Q. And so there was an effort made in or
18 about 2000 to allow products to be input into the
19 system for clinical reasons without pricing, such
20 as AWP pricing information?

21 A. Correct.

22 Q. And when that decision was made, is it

Page 165

1 true that only 200 products or fewer were
2 actually input with a zero price in the AWP
3 field?

4 A. That's what this says. I cannot
5 confirm that number, I was not involved in the
6 analysis of how many zero prices there were.

7 Q. Does that approximately sound correct?

8 A. That would sound approximately
9 correct, yes.

10 Q. And how many drug products total are
11 in the Red Book database today?

12 A. Today, including in -- deactive and
13 active products, there are around 210,000 NDCs.

14 Q. How many active NDCs, roughly, are in
15 the database today?

16 A. My best guess would be 40 to 50,000.

17 Q. So if you're comparing, roughly, 200
18 or less products with a zero price as AWP,
19 compared to 40 or 50,000 active NDC numbers,
20 obviously we're talking about a very small
21 fraction; is that right?

22 A. Correct.

42 (Pages 162 to 165)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 166	Page 168
<p>1 Q. Then there's -- in this Exhibit 15</p> <p>2 there is a description of three ways in which AWP</p> <p>3 is derived; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. And have you read those three</p> <p>6 paragraphs?</p> <p>7 A. Yes, I have.</p> <p>8 Q. And does that accurately set forth how</p> <p>9 Red Book has published AWP over the years?</p> <p>10 MR. CAHILL: Objection to form.</p> <p>11 MR. SWEENEY: Object to the form.</p> <p>12 A. At the point -- at the time this was</p> <p>13 written in 2002, yes.</p> <p>14 Q. And is it true that in all three of</p> <p>15 those mechanisms the manufacturer of a given NDC</p> <p>16 is aware of the mechanism by which their AWP is</p> <p>17 being published?</p> <p>18 MR. GASTWIRTH: Objection to form.</p> <p>19 MR. SWEENEY: Objection to form.</p> <p>20 MS. TORGERSON: Objection.</p> <p>21 A. Yes, they would have been aware.</p> <p>22 Q. And was that a purposeful --</p>	<p>1 A. I have no idea what the hunt line is.</p> <p>2 Again, this was prior to my involvement with Red</p> <p>3 Book. I assume it's a hotline of some type.</p> <p>4 Q. Yeah, yeah.</p> <p>5 So you don't know -- I was just curious</p> <p>6 what that might mean.</p> <p>7 A. (No response)</p> <p>8 Q. Okay.</p> <p>9 If you could, take a look at what's</p> <p>10 being marked as Exhibit 16.</p> <p>11 (PowerPoint presentation entitled</p> <p>12 "Micromedex AQP analysis, October 15th, 2002"</p> <p>13 marked Exhibit Minne 016 for identification.)</p> <p>14 (Pause)</p> <p>15 Q. Have you had an opportunity to review</p> <p>16 Exhibit 16?</p> <p>17 A. Yes, I have.</p> <p>18 Q. Are you familiar with this document?</p> <p>19 A. Yes, I am.</p> <p>20 Q. Were you a part of the creation of</p> <p>21 this document?</p> <p>22 A. No, I was not.</p>
Page 167	Page 169
<p>1 MR. ANDERSON: Strike that.</p> <p>2 Q. Was that the purpose behind Red Book</p> <p>3 formulating an AWP policy?</p> <p>4 MR. GASTWIRTH: Objection to form.</p> <p>5 MS. TORGERSON: Objection to form.</p> <p>6 MR. ANDERSON: I'll rephrase it.</p> <p>7 Q. Was the purpose behind Red Book</p> <p>8 formulating that AWP policy to make sure that</p> <p>9 drug manufacturers continued to be aware of the</p> <p>10 mechanism by which their AWP's were being</p> <p>11 published?</p> <p>12 MR. CAHILL: Objection.</p> <p>13 MS. TORGERSON: Object to form.</p> <p>14 A. That would have been one of the</p> <p>15 purposes.</p> <p>16 Q. Back on Exhibit 14, I've got a</p> <p>17 question about this, the bottom of the page, the</p> <p>18 first page.</p> <p>19 A. Um-hum.</p> <p>20 Q. It says, "If you have any questions,</p> <p>21 please call the Red Book hunt line."</p> <p>22 What is the -- what is that?</p>	<p>1 Q. Can you describe generally what this</p> <p>2 document is?</p> <p>3 A. This document pretty much is a</p> <p>4 PowerPoint presentation of the e-mail from the</p> <p>5 previous day, which is Exhibit 15, that again</p> <p>6 describes where we get our pricing information</p> <p>7 from.</p> <p>8 Q. Were you present when this PowerPoint</p> <p>9 presentation was provided?</p> <p>10 A. No, I was not.</p> <p>11 Q. How did you become familiar with this</p> <p>12 presentation?</p> <p>13 A. Through the documents made available</p> <p>14 for this deposition.</p> <p>15 Q. Do you know who the audience was for</p> <p>16 the presentation?</p> <p>17 A. I do not.</p> <p>18 Q. It's titled "Micromedex AQP Analysis,</p> <p>19 October 15th, 2002"; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And this -- if you look at the second</p> <p>22 page, that page reads, "How do we gather MDX AWP</p>

43 (Pages 166 to 169)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 170	Page 172
<p>1 information"; correct?</p> <p>2 A. Correct.</p> <p>3 Q. What does MDX stand for?</p> <p>4 A. Micromedex.</p> <p>5 Q. And is that a shorthand description of</p> <p>6 the AWP's that were published by Red Book both</p> <p>7 electronically and in printed publications?</p> <p>8 MR. CAHILL: The reference to</p> <p>9 Micromedex, is that --</p> <p>10 MR. ANDERSON: Yes.</p> <p>11 A. What was happening at this time was</p> <p>12 that Red Book was being moved from its base in</p> <p>13 Montvale, New Jersey to the Denver office. So,</p> <p>14 yes, Micromedex, meaning Red Book, at that time.</p> <p>15 Q. I see.</p> <p>16 And the first bullet reads,</p> <p>17 "Manufacturer supplies AWP"; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Can you describe just generally what</p> <p>20 that means?</p> <p>21 A. It would be an AWP -- an AWP that was</p> <p>22 supplied to us by the manufacturer for their</p>	<p>1 A. Correct.</p> <p>2 Q. And then there's a second subbullet</p> <p>3 that reads, "Manufacturer does not supply an AWP</p> <p>4 markup formula."</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. How frequent was it that a</p> <p>8 manufacturer would not provide Red Book with an</p> <p>9 AWP, and not provide Red Book with markup</p> <p>10 instructions to create an AWP?</p> <p>11 A. At this time -- at the time of this</p> <p>12 presentation, put together in 2002 --</p> <p>13 Q. Yes.</p> <p>14 A. -- it was not very frequent.</p> <p>15 Q. Do you have an approximate number of</p> <p>16 manufacturers in mind who would refuse to provide</p> <p>17 either markup information or AWP information?</p> <p>18 A. It was between five and ten.</p> <p>19 Q. Do you know the names of any of those</p> <p>20 manufacturers?</p> <p>21 A. I recall some of them. I couldn't</p> <p>22 list all of them.</p>
Page 171	Page 173
<p>1 product.</p> <p>2 Q. All right. And then there's a second</p> <p>3 bullet that reads, "Manufacturer supplies</p> <p>4 wholesale acquisition cost (WAC) or direct price</p> <p>5 (DP)."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes, you did.</p> <p>8 Q. And then there's a subbullet that</p> <p>9 reads, "Manufacturer supplies an AWP markup</p> <p>10 formula."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes, you did.</p> <p>13 Q. Can you describe generally what that</p> <p>14 concept is?</p> <p>15 A. That concept refers to when the</p> <p>16 manufacturer would supply us with a WAC or a DP</p> <p>17 price and verbally would tell us to create a WP,</p> <p>18 add this merge.</p> <p>19 Q. So as opposed to providing the exact</p> <p>20 numerical figure for the AWP, instead the</p> <p>21 manufacturer would provide guidance on how the</p> <p>22 AWP would be calculated?</p>	<p>1 Q. I understand.</p> <p>2 As best you can, can you provide the</p> <p>3 names of those manufacturers?</p> <p>4 A. Bedford, TAP, I believe Pharmacia.</p> <p>5 Q. Can you recall any others?</p> <p>6 A. Not off the top of my head.</p> <p>7 Q. Were the three that you named,</p> <p>8 Bedford, TAP and Pharmacia, the larger drug</p> <p>9 manufacturers who were refusing to provide AWP or</p> <p>10 AWP markup information?</p> <p>11 MR. GASTWIRTH: Objection.</p> <p>12 MR. SWEENEY: Object to the form.</p> <p>13 A. Not being able to recall what the</p> <p>14 other ones are, I can't answer that.</p> <p>15 Q. All right. I'm going to go through a</p> <p>16 list of some of the companies that are</p> <p>17 represented here today, and ask you if they were</p> <p>18 some of the companies who refused to provide both</p> <p>19 AWP information and AWP markup information. All</p> <p>20 right?</p> <p>21 A. Okay.</p> <p>22 Q. Schering?</p>

44 (Pages 170 to 173)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 174	Page 176
<p>1 MS. TORGERSON: Object to the form.</p> <p>2 A. I don't recall.</p> <p>3 Q. Schering Plough?</p> <p>4 MS. TORGERSON: Object to the form.</p> <p>5 A. I don't recall.</p> <p>6 Q. Warrick?</p> <p>7 MS. TORGERSON: Object to the form.</p> <p>8 A. I don't recall.</p> <p>9 Q. So providing you with the names isn't</p> <p>10 going to assist you in recalling at all?</p> <p>11 A. No.</p> <p>12 Q. Is there some records kept -- because</p> <p>13 I've been through Red Book's production, and I</p> <p>14 can't find a listing. I saw a reference to five</p> <p>15 drug companies, but I couldn't find any listing</p> <p>16 of the actual names of the companies.</p> <p>17 Does Red Book have that information?</p> <p>18 A. Yes.</p> <p>19 Q. Would you provide that information?</p> <p>20 A. Yes. It's actually currently on our</p> <p>21 website.</p> <p>22 Q. Oh, really?</p>	<p>1 A. -- and then it lists more</p> <p>2 manufacturers or specific products of a</p> <p>3 manufacturer, and the date that the AWP was no</p> <p>4 longer given to Red Book, so that we applied the</p> <p>5 AWP policy.</p> <p>6 Q. Okay, thank you.</p> <p>7 All right, now, continuing on with</p> <p>8 Exhibit 16, looking at the third page now,</p> <p>9 there's a bullet that reads, "Manufacturer" --</p> <p>10 MR. ANDERSON: Well, strike that.</p> <p>11 Q. The slide itself is titled</p> <p>12 "Manufacturer-supplied AWP"; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And then the first bullet reads, "As</p> <p>15 policy, require manufacturer to supply written</p> <p>16 information."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And is that Red Book's policy?</p> <p>20 A. That a manufacturer, for any price</p> <p>21 that they supply to us, it has to be written, it</p> <p>22 cannot be just a verbal communication.</p>
Page 175	Page 177
<p>1 A. Yes.</p> <p>2 Q. Well, I should have just looked on the</p> <p>3 web, then, rather than digging through all of the</p> <p>4 produced documents.</p> <p>5 All right. When you say "our website,"</p> <p>6 you mean if I just go to the website I'll be able</p> <p>7 to find it fairly easily?</p> <p>8 A. It's the same website that lists our</p> <p>9 AWP policy.</p> <p>10 Q. Okay, thank you. I've got that web</p> <p>11 address in the documents.</p> <p>12 A. Okay.</p> <p>13 Q. And that holds true not only as to the</p> <p>14 manufacturers who were refusing to do -- report</p> <p>15 AWP or AWP markup information today as well as</p> <p>16 the names of the companies who refused to produce</p> <p>17 AWP or AWP markup information back in the 2002</p> <p>18 time frame; correct?</p> <p>19 A. It lists seven manufacturers, who were</p> <p>20 the original seven that we applied the AWP policy</p> <p>21 to, back starting in March of '03 --</p> <p>22 Q. Yes.</p>	<p>1 Q. Why does Red Book require the</p> <p>2 documentation to be written rather than provided</p> <p>3 verbally?</p> <p>4 A. Again, to verify or make sure that</p> <p>5 what we have entered into the database is what</p> <p>6 the manufacturer requested that we list.</p> <p>7 Q. And then the second bullet reads,</p> <p>8 "Documentation maintained indefinitely."</p> <p>9 True?</p> <p>10 A. True.</p> <p>11 Q. And is that an accurate statement?</p> <p>12 A. Yes.</p> <p>13 Q. Why does Red Book maintain the</p> <p>14 documentation of AWP indefinitely?</p> <p>15 A. So there's a record of why a price was</p> <p>16 listed a certain way.</p> <p>17 Q. And is it true that ultimately that</p> <p>18 enables Red Book to rely on the manufacturer for</p> <p>19 the AWP, as opposed to any claims that Red Book</p> <p>20 was controlling the AWP?</p> <p>21 MS. LORENZO: Object to the form.</p> <p>22 MR. SWEENEY: Object to the form.</p>

45 (Pages 174 to 177)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 178	Page 180
<p>1 MR. GASTWIRTH: Object to the form.</p> <p>2 A. Can you repeat the question? I'm</p> <p>3 sorry.</p> <p>4 Q. Is it true that ultimately that policy</p> <p>5 enables Red Book to rely on the manufacturer as</p> <p>6 opposed to any claims that Red Book was</p> <p>7 controlling the AWP?</p> <p>8 MR. SWEENEY: Object to the form.</p> <p>9 MR. GASTWIRTH: Object to the form.</p> <p>10 A. Yes.</p> <p>11 Q. The third bullet reads, "Approximately</p> <p>12 80 percent of Micromedex AWP information is</p> <p>13 provided by manufacturers."</p> <p>14 Correct?</p> <p>15 A. At the time that was correct.</p> <p>16 Q. And the time being back in around</p> <p>17 2002?</p> <p>18 A. Correct.</p> <p>19 Q. What's the percentage today,</p> <p>20 approximately?</p> <p>21 A. I would estimate 50 percent now.</p> <p>22 Q. Do you have any understanding -- and</p>	<p>1 A. I --</p> <p>2 MR. SWEENEY: Object to form.</p> <p>3 MS. TORGERSON: Object to form.</p> <p>4 MR. GASTWIRTH: Object to form.</p> <p>5 MR. FARQUHAR: Lack of foundation.</p> <p>6 A. I don't work for a manufacturer, I</p> <p>7 can't answer that question.</p> <p>8 Q. All right. That's all I want, is just</p> <p>9 Red Book's best testimony.</p> <p>10 The next page, looking at the third</p> <p>11 subbullet, that begins with the acronym MDX.</p> <p>12 "MDX writes up verbal communication and</p> <p>13 maintains it is files indefinitely."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes, you did.</p> <p>16 Q. Why does Micromedex and Red Book write</p> <p>17 up verbal communication of AWP for manufacturers?</p> <p>18 A. At the time the practice was if the</p> <p>19 manufacturer would only supply the information as</p> <p>20 far as what to -- the formula to use for creating</p> <p>21 AWP, obviously that communication had to be</p> <p>22 documented, so that we didn't have to continually</p>
Page 179	Page 181
<p>1 when I say "you" I mean Red Book -- does Red Book</p> <p>2 have any understanding as to why fewer drug</p> <p>3 companies are publishing AWP directly to Red Book</p> <p>4 today?</p> <p>5 A. Yes.</p> <p>6 Q. Why?</p> <p>7 A. Our understanding is they don't want</p> <p>8 to supply it because they don't want to be caught</p> <p>9 up in entanglements such as this.</p> <p>10 Q. You mean this litigation?</p> <p>11 A. Correct.</p> <p>12 Q. Is there something wrong with the AWP's</p> <p>13 that are published by manufacturers?</p> <p>14 MS. TORGERSON: Objection to form.</p> <p>15 MR. LONERGAN: Objection.</p> <p>16 MR. GASTWIRTH: Objection.</p> <p>17 MR. SWEENEY: Objection.</p> <p>18 A. Wrong? I don't understand what you</p> <p>19 mean by "wrong."</p> <p>20 Q. Why would drug companies back in the</p> <p>21 '90s publish AWP's but not today? Do you know, or</p> <p>22 --</p>	<p>1 go back to the manufacturer and ask "What would</p> <p>2 you like us to do."</p> <p>3 Q. And did Red Book notify manufacturers</p> <p>4 that they would be documenting the verbal</p> <p>5 communication concerning AWP from the</p> <p>6 manufacturer?</p> <p>7 A. I don't know.</p> <p>8 Q. Well, we'll get into some specific</p> <p>9 examples in a little bit that may refresh your</p> <p>10 memory.</p> <p>11 Do you recall any manufacturers by name</p> <p>12 who would only provide AWP markup information</p> <p>13 verbally?</p> <p>14 A. No.</p> <p>15 Q. Was it a relatively small group of</p> <p>16 manufacturers?</p> <p>17 A. Again, relatively, yes.</p> <p>18 Q. Can you approximate the number? Was it</p> <p>19 more than ten or less than ten?</p> <p>20 MR. CAHILL: Objection.</p> <p>21 A. It would have been more than ten.</p> <p>22 Q. More than ten?</p>

46 (Pages 178 to 181)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 182	Page 184
<p>1 A. (Nodding)</p> <p>2 Q. What about more than 20?</p> <p>3 A. Probably more than 20.</p> <p>4 Q. Is there some documentation that's</p> <p>5 maintained by Red Book about the identity of the</p> <p>6 drug companies who began only providing AWP</p> <p>7 information verbally?</p> <p>8 A. Yes.</p> <p>9 Q. Is that also on the website?</p> <p>10 A. No.</p> <p>11 Q. Has that information been produced?</p> <p>12 Because if it has, I haven't located it.</p> <p>13 MR. CAHILL: It's up to you, I could</p> <p>14 respond. If you want the witness to respond, I'm</p> <p>15 not trying to interject.</p> <p>16 MR. ANDERSON: Okay.</p> <p>17 Q. First, do you know, ma'am, has it been</p> <p>18 produced?</p> <p>19 A. Has it been produced for this</p> <p>20 deposition?</p> <p>21 Q. Yes.</p> <p>22 A. That I do not know.</p>	<p>1 Q. So instead it's -- that information</p> <p>2 about AWP communication is reflected in each</p> <p>3 manufacturer's file?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And we're going to get to some</p> <p>6 examples of that, but is it true that Red Book</p> <p>7 keeps a so-called "AWP policy file" on each</p> <p>8 manufacturer name by name?</p> <p>9 MS. TORGERSON: Object to form.</p> <p>10 MR. SWEENEY: Object to form.</p> <p>11 A. If -- Red Book is implementing their</p> <p>12 AWP policy since 2003, yes.</p> <p>13 Q. All right. A couple of final</p> <p>14 questions on Exhibit 16.</p> <p>15 Do you believe as the Red Book</p> <p>16 representative that Exhibit 16 was primarily an</p> <p>17 internal document to Red Book and Micromedex?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, if you could, take a look</p> <p>20 at what's been marked as Exhibit 17.</p> <p>21 (Document bearing Bates No. TH 463</p> <p>22 marked Exhibit Minne 017 for identification.)</p>
Page 183	Page 185
<p>1 Q. Okay.</p> <p>2 MR. ANDERSON: Tom, I don't want to get</p> <p>3 into a long --</p> <p>4 MR. CAHILL: And I don't want it</p> <p>5 either, so I'll -- yeah.</p> <p>6 MR. ANDERSON: Do you know, has it been</p> <p>7 produced? Did I miss it?</p> <p>8 MR. CAHILL: My point was going to be</p> <p>9 we produced the manufacturer files. So, in other</p> <p>10 words, if there were, to the extent there's</p> <p>11 written --</p> <p>12 MR. ANDERSON: You're right, and I've</p> <p>13 got some examples of those, but I'm asking more</p> <p>14 as a summary.</p> <p>15 Q. Is there --</p> <p>16 MR. ANDERSON: And I'll clarify the</p> <p>17 record. Thank you, Tom.</p> <p>18 Q. Is there a document or some</p> <p>19 documentation that provides a listing of the</p> <p>20 identity of the manufacturers who only provide</p> <p>21 AWP information verbally?</p> <p>22 A. Not that I'm aware of.</p>	<p>1 Q. Are you familiar with the one-page</p> <p>2 document marked Exhibit 17, Bates labeled TH 463?</p> <p>3 A. Yes.</p> <p>4 Q. And what is this document?</p> <p>5 A. This is the AWP policy.</p> <p>6 Q. And was this information provided by</p> <p>7 Red Book externally?</p> <p>8 A. This information was created by</p> <p>9 Thomson.</p> <p>10 Q. Yes, I know it was created by Red</p> <p>11 Book, Thomson, but I'm saying was it then in turn</p> <p>12 provided external to Red Book?</p> <p>13 A. Yes.</p> <p>14 Q. And do you know how it was</p> <p>15 disseminated?</p> <p>16 A. It's listed on our website, and all</p> <p>17 manufacturers who were no longer supplying AWP</p> <p>18 were then sent this communication to let them</p> <p>19 know.</p> <p>20 Q. Thank you.</p> <p>21 So this letter, marked Exhibit 17, was</p> <p>22 literally sent to drug manufacturers who were</p>

47 (Pages 182 to 185)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 186	Page 188
<p>1 refusing to --</p> <p>2 MR. ANDERSON: Well, strike that, I'll</p> <p>3 ask a broader question.</p> <p>4 Q. Was Exhibit 17 sent to every drug</p> <p>5 manufacturer who had NDCs published in Red Book?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Okay. Who was the --</p> <p>8 MR. ANDERSON: Strike that.</p> <p>9 Q. Which types of drug manufacturers did</p> <p>10 receive what's marked as Exhibit 17?</p> <p>11 A. The manufacturers who no longer</p> <p>12 supplied us with AWP or a markup formula to</p> <p>13 create the AWP were sent this communication.</p> <p>14 Q. Okay.</p> <p>15 And again, without beating a dead</p> <p>16 horse, this just conveys the same information we</p> <p>17 went over in the PowerPoint presentation marked</p> <p>18 Exhibit 16; correct?</p> <p>19 MR. GASTWIRTH: Objection to form.</p> <p>20 A. Exhibit 16 is an internal -- Exhibit</p> <p>21 16 --</p> <p>22 Q. I realize that.</p>	<p>1 A. Yes, I am.</p> <p>2 Q. And can you describe it generally?</p> <p>3 A. This document describes how we will</p> <p>4 respond to customers and non-customers and</p> <p>5 manufacturers when they call the company to ask</p> <p>6 about our AWP policy or specific prices.</p> <p>7 Q. So this was a mechanism where Thomson</p> <p>8 and Red Book could guide their representatives'</p> <p>9 communications with drug manufacturers?</p> <p>10 A. Correct.</p> <p>11 Q. And looking at the second-to-last page</p> <p>12 of this Exhibit 18, I see that there's the AWP</p> <p>13 policy set forth; correct?</p> <p>14 A. Correct.</p> <p>15 Q. With the same effective date as the</p> <p>16 policy itself, which was previously marked as</p> <p>17 Exhibit 17; correct?</p> <p>18 A. Correct.</p> <p>19 Q. All right.</p> <p>20 Now I've got a similar document, but</p> <p>21 it's dated a few days later.</p> <p>22 (Document dated July 29, 2003 marked</p>
Page 187	Page 189
<p>1 A. -- was not shared.</p> <p>2 Exhibit 16 explains where we're at and</p> <p>3 why we need to create the policy. Exhibit 17 is</p> <p>4 the policy.</p> <p>5 Q. I see.</p> <p>6 Has the policy changed any from May</p> <p>7 22nd, 2003 to the present?</p> <p>8 A. I believe there was an update in '04,</p> <p>9 just a few footnotes were updated or something</p> <p>10 like that.</p> <p>11 Q. All right. Moving right along, we'll</p> <p>12 get to that update.</p> <p>13 (Document bearing Bates Nos. TH269</p> <p>14 through 280 marked Exhibit Minne 018 for</p> <p>15 identification.)</p> <p>16 Q. If you could, take a look at what's</p> <p>17 been marked as Exhibit 18.</p> <p>18 MR. ANDERSON: For the record, Exhibit</p> <p>19 18 is titled "Red Book and Ready Price Average</p> <p>20 Wholesale Price Communication Policy," dated July</p> <p>21 23rd, 2003, and it's labeled TH269 through 280.</p> <p>22 Q. Are you familiar with this document?</p>	<p>1 Exhibit Minne 019 for identification.)</p> <p>2 Q. Are you familiar with this document?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And just to streamline matters, can</p> <p>5 you describe to me what differences, if any,</p> <p>6 exist between Exhibit 19, which is dated July</p> <p>7 29th, 2003, and Exhibit 18, which is dated July</p> <p>8 23rd, 2003?</p> <p>9 A. My understanding between the two</p> <p>10 documents is that Exhibit 19 was specific for the</p> <p>11 salespeople.</p> <p>12 Q. So this was for Red Book personnel</p> <p>13 involved in the promotion and sales of Red Book's</p> <p>14 products and services?</p> <p>15 MR. GASTWIRTH: Objection.</p> <p>16 A. Correct.</p> <p>17 Q. The answer was "correct"?</p> <p>18 A. Correct.</p> <p>19 Q. Who was the intended audience within</p> <p>20 Red Book of Exhibit 18?</p> <p>21 A. For Exhibit 18 who was the intended</p> <p>22 audience?</p>

48 (Pages 186 to 189)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 190	Page 192
<p>1 Q. Yes, Miss Minne.</p> <p>2 A. It would have included our editorial</p> <p>3 staff, our -- what we call our ETS, external tech</p> <p>4 support.</p> <p>5 Q. I see. And the person -- the entities</p> <p>6 that editorial staff would be dealing with, for</p> <p>7 instance, would be drug manufacturers; correct?</p> <p>8 MR. GASTWIRTH: Objection to form.</p> <p>9 A. Correct.</p> <p>10 Q. Who would be the typical type of</p> <p>11 entity that the sales personnel would be</p> <p>12 interacting with?</p> <p>13 A. They would be the customers.</p> <p>14 Q. Which could be subscribers such as</p> <p>15 manufacturers, but it could also include</p> <p>16 pharmacies, chain pharmacies and third-party</p> <p>17 payors; correct?</p> <p>18 A. Correct.</p> <p>19 Q. As well as specifically government</p> <p>20 agencies that subscribe to Red Book; correct?</p> <p>21 A. Correct, if they're a customer.</p> <p>22 Q. All right.</p>	<p>1 A. Glaxo.</p> <p>2 Q. When did Glaxo take that action?</p> <p>3 A. It was only for one product, and it</p> <p>4 was either the fall of '07 or the fall of '06, I</p> <p>5 don't recall.</p> <p>6 Q. And how did Glaxo take that action?</p> <p>7 A. They would not provide any type -- any</p> <p>8 price of any type.</p> <p>9 Q. Other than that one instance with</p> <p>10 Glaxo, is there any other instance where a drug</p> <p>11 company has prevented Red Book from publishing</p> <p>12 pricing information in accordance with the AWP</p> <p>13 policy?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. And you're the corporate</p> <p>16 representative who would be most knowledgeable</p> <p>17 about that; correct?</p> <p>18 MR. SWEENEY: Object to the form.</p> <p>19 A. I'm the corporate representative, yes.</p> <p>20 Q. And -- I mean, you were in charge of</p> <p>21 the editorial group during all the recent years,</p> <p>22 generally?</p>
Page 191	Page 193
<p>1 And again, the second-to-last page of</p> <p>2 Exhibit 19 also sets forth the AWP policy;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And is it true that that policy</p> <p>6 basically states that the manufacturers are the</p> <p>7 ones who are controlling the AWP's that are</p> <p>8 published?</p> <p>9 MR. GASTWIRTH: Objection to form.</p> <p>10 MR. SWEENEY: Objection to form.</p> <p>11 MS. LORENZO: Objection to form.</p> <p>12 A. It's stating if a manufacturer won't</p> <p>13 supply the AWP, we will calculate it using our</p> <p>14 formula.</p> <p>15 Q. And notify the manufacturer of such?</p> <p>16 A. That we are doing such, exactly.</p> <p>17 Q. Has any manufacturer ever prevented</p> <p>18 Red Book from publishing an AWP in accordance</p> <p>19 with the AWP policy?</p> <p>20 MS. TORGERSON: Objection to form.</p> <p>21 A. Yes.</p> <p>22 Q. Which company?</p>	<p>1 MR. SWEENEY: Object to the form.</p> <p>2 A. With a few exceptions as noted earlier</p> <p>3 --</p> <p>4 Q. Yes.</p> <p>5 A. -- a few years, yes.</p> <p>6 (Document describing electronic file of</p> <p>7 Red Book marked Exhibit Minne 020 for</p> <p>8 identification.)</p> <p>9 Q. Now, if you could, take a look at</p> <p>10 what's been marked as Minne Exhibit 20.</p> <p>11 (Pause)</p> <p>12 Q. Are you familiar with this --</p> <p>13 MR. ANDERSON: I'm sorry, Doug, I know</p> <p>14 you're over there and not able to see the</p> <p>15 document.</p> <p>16 MR. FARQUHAR: We're getting copies</p> <p>17 over here, we're fine.</p> <p>18 MR. ANDERSON: Oh, you're good now?</p> <p>19 Okay.</p> <p>20 MR. FARQUHAR: Thank you, Jarrett.</p> <p>21 MR. ANDERSON: My pleasure.</p> <p>22 Q. Are you familiar with Exhibit 20, Miss</p>

49 (Pages 190 to 193)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 194	Page 196
<p>1 Minne?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. It's a document that describes the</p> <p>5 electronic or one of the electronic files</p> <p>6 available of the Red Book.</p> <p>7 Q. And who would be the intended audience</p> <p>8 of Exhibit 20?</p> <p>9 A. The intended audience would be a</p> <p>10 customer who either has purchased or is</p> <p>11 interested in purchasing the electronic files.</p> <p>12 Q. Subscribers who receive the electronic</p> <p>13 pricing data, for instance?</p> <p>14 A. Correct.</p> <p>15 Q. And again, that could include</p> <p>16 manufacturers, as well -- or does include</p> <p>17 manufacturers as well as pharmacies, chain</p> <p>18 pharmacies and third-party payors, like the</p> <p>19 government?</p> <p>20 A. Yes. Could include anyone.</p> <p>21 Q. And on the back page of Exhibit 20,</p> <p>22 the AWP policy is set forth; correct?</p>	<p>1 mentioned earlier which contains the identity of</p> <p>2 drug manufacturers who refused to provide AWP or</p> <p>3 AWP markup information?</p> <p>4 A. Yes.</p> <p>5 Q. Miss Minne, I'm now going to be going</p> <p>6 into some manufacturer-specific information.</p> <p>7 (Document bearing Bates Nos. Red Book</p> <p>8 00595 through 600 marked Exhibit Minne 022 for</p> <p>9 identification.)</p> <p>10 Q. If you could, take a look at what's</p> <p>11 been marked as Exhibit 22.</p> <p>12 MR. ANDERSON: For the record, Exhibit</p> <p>13 22 is a document Bates labeled Red Book 00595</p> <p>14 through 600.</p> <p>15 (Pause)</p> <p>16 Q. Have you had an opportunity to review</p> <p>17 Exhibit 22?</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with Exhibit 22?</p> <p>20 A. Yes.</p> <p>21 Q. What is generally Exhibit 22?</p> <p>22 A. This exhibit is demonstrating a</p>
Page 195	Page 197
<p>1 A. Yes.</p> <p>2 Q. And this appears to have been sent out</p> <p>3 around November 2003; correct?</p> <p>4 A. It appears that way.</p> <p>5 Q. Okay.</p> <p>6 (Revision to AWP policy marked</p> <p>7 Exhibit Minne 021 for identification.)</p> <p>8 Q. Now, if you could take a look at</p> <p>9 what's been marked Minne 21.</p> <p>10 Are you familiar with this document?</p> <p>11 A. Yes.</p> <p>12 Q. And this is the revision to the AWP</p> <p>13 policy from early 2004 that you referenced</p> <p>14 previously; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And what is the revision that's</p> <p>17 reflected in 21 -- in Exhibit 21 that's somehow</p> <p>18 different than the preceding AWP policy?</p> <p>19 A. I believe it has to do with the</p> <p>20 second-to-last paragraph, where we talk about</p> <p>21 websites to go for more information.</p> <p>22 Q. And is that the web address that you</p>	<p>1 manufacturer who we have -- who will not supply</p> <p>2 AWP or a markup, so we applied the AWP policy.</p> <p>3 It's also showing that every year we</p> <p>4 reconfirm that that is still what the</p> <p>5 manufacturer -- that they will not supply, and we</p> <p>6 -- every year we send out the communication, the</p> <p>7 policy, and verification that "this is what we're</p> <p>8 doing with your products."</p> <p>9 Q. And this particular company happens to</p> <p>10 be Abbott Pharmaceuticals; correct?</p> <p>11 A. Correct.</p> <p>12 Q. So I take it, then, that Abbott</p> <p>13 Pharmaceuticals will be one of the seven</p> <p>14 companies that's listed on the website?</p> <p>15 MS. CITERA: Object to the form.</p> <p>16 A. I don't know if they were one of the</p> <p>17 original seven, but they would be listed now with</p> <p>18 the date that they stopped supplying AWP.</p> <p>19 Q. Can you ascertain from Exhibit 22 what</p> <p>20 date Abbott Pharmaceutical chose to stop</p> <p>21 reporting AWP or AWP markup information?</p> <p>22 A. No. It would have been prior to July</p>

50 (Pages 194 to 197)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 198	Page 200
<p>1 13th of 2004.</p> <p>2 Q. You're looking at the fourth page?</p> <p>3 A. The last page.</p> <p>4 Q. The last page.</p> <p>5 And why do you say it would have been</p> <p>6 before July 14th?</p> <p>7 A. Because it says, "I faxed you the Red</p> <p>8 Book AWP policy back on July 13th, '04; AWP</p> <p>9 equals WAC plus 20 percent per policy," so that's</p> <p>10 indicating that in July of '04 that policy was</p> <p>11 already in effect.</p> <p>12 Q. I see.</p> <p>13 If you could, take a look at the third</p> <p>14 page of Exhibit 22.</p> <p>15 Do you agree that appears to be a</p> <p>16 letter from Micromedex/Red Book dated August 9th,</p> <p>17 2005 to April Gerzel, Abbott Pharmaceuticals?</p> <p>18 A. Yes.</p> <p>19 Q. And Traci Kellam, I take it's an</p> <p>20 employee of Red Book; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Was Traci actually within the</p>	<p>1 MS. CITERA: Objection to form.</p> <p>2 A. Again, documentation so the</p> <p>3 manufacturer knows exactly how we're getting</p> <p>4 those AWP's for their products.</p> <p>5 Q. Is there a historical basis for the 20</p> <p>6 percent markup to calculate AWP?</p> <p>7 A. That's based on the policy.</p> <p>8 Q. And did Red Book base that policy on</p> <p>9 historical information about how drug</p> <p>10 manufacturers reported AWP?</p> <p>11 A. They came up with that percentage</p> <p>12 based on analysis of the data that they currently</p> <p>13 had in the database.</p> <p>14 Q. Right.</p> <p>15 And so, simply put, over the years</p> <p>16 there has been recognition that AWP's were</p> <p>17 generally about 20 percent higher than WACs --</p> <p>18 MS. TORGERSON: Objection to form.</p> <p>19 Q. -- correct?</p> <p>20 MS. TORGERSON: Objection to form.</p> <p>21 A. Correct.</p> <p>22 Q. Has Abbott Pharmaceuticals, to your</p>
Page 199	Page 201
<p>1 editorial services department?</p> <p>2 A. Yes.</p> <p>3 Q. Working under you; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And Traci writes, "This letter is in</p> <p>6 regards to our verbal conversation concerning AWP</p> <p>7 for Abbott Pharmaceutical's products on August</p> <p>8 9th, 2005 at 11:50 a.m. In the absence of a</p> <p>9 manufacturer provided AWP or a manufacturer</p> <p>10 calculated markup to establish an AWP, we will be</p> <p>11 implementing a 20 percent markup above WAC to</p> <p>12 calculate AWP. We will not report a third</p> <p>13 party's determination of AWP for your products.</p> <p>14 As discussed in our conversation, this markup</p> <p>15 will apply to all Pharmaceutical's products" --</p> <p>16 "to all Abbott Pharmaceutical's products. This</p> <p>17 is in accordance with our company policy for</p> <p>18 calculation of AWP."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Why did Red Book go to the trouble of</p> <p>22 notifying Abbott of this information?</p>	<p>1 knowledge -- and I mean Red Book's knowledge --</p> <p>2 ever sought to prevent Red Book from publishing</p> <p>3 an AWP for Abbott drugs?</p> <p>4 MS. CITERA: Objection to form.</p> <p>5 A. I am not aware of that.</p> <p>6 Q. Then if you could, look at the next</p> <p>7 page of Exhibit 22. It's titled "Abbott</p> <p>8 Pharmaceutical Company Pricing/Markup History,"</p> <p>9 and it's dated January 1st, '95 through August</p> <p>10 9th, 2005; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Does Red Book keep records such as</p> <p>13 this for all companies, drug companies, that have</p> <p>14 NDCs published by Red Book?</p> <p>15 A. Yes.</p> <p>16 Q. Why?</p> <p>17 A. Again, documentation of dates where</p> <p>18 things occurred, and also documentation of verbal</p> <p>19 communications between manufacturers and Red Book</p> <p>20 staff.</p> <p>21 Q. And is one of the purposes behind this</p> <p>22 documentation to ultimately enable Red Book to</p>

51 (Pages 198 to 201)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 202	Page 204
<p>1 establish that manufacturers are controlling the</p> <p>2 pricing that's published?</p> <p>3 MR. CAHILL: Objection.</p> <p>4 MS. CITERA: Object to form.</p> <p>5 A. No, the purpose behind this is to know</p> <p>6 what we're doing and why we're doing it.</p> <p>7 Q. Couldn't Red Book notify manufacturers</p> <p>8 without going to the steps of documenting all the</p> <p>9 notifications to the manufacturers?</p> <p>10 A. It could, but it wouldn't be smart</p> <p>11 practice.</p> <p>12 Q. Why?</p> <p>13 A. Pure business sense; you document why</p> <p>14 you do what you do.</p> <p>15 Q. Yeah. Because then if it wasn't</p> <p>16 documented, maybe a manufacturer could dispute it</p> <p>17 later?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 Q. Is that right?</p> <p>20 A. Anyone could dispute it.</p> <p>21 Q. Are these records kept in the ordinary</p> <p>22 course of Red Book's business?</p>	<p>1 What does that information indicate to</p> <p>2 you as Red Book's corporate representative?</p> <p>3 MS. CITERA: Objection, form.</p> <p>4 A. That indicates that at that time,</p> <p>5 which was before implementation of the AWP</p> <p>6 policy, the Abbott prices were being determined</p> <p>7 by WAC plus 25 percent. Previously provided</p> <p>8 meaning Abbott would have provided that markup</p> <p>9 percentage to Red Book.</p> <p>10 Q. So prior to or, frankly, potentially</p> <p>11 after August 20th, 2002 as well, the AWP's that</p> <p>12 were published by Red Book for Abbott</p> <p>13 Pharmaceuticals' products were based on a WAC</p> <p>14 plus 25 percent formula that had been provided to</p> <p>15 Red Book by Abbott; correct?</p> <p>16 MS. CITERA: Object to the form.</p> <p>17 A. Correct.</p> <p>18 Q. Is there any possibility that that</p> <p>19 formula was created by Red Book and Red Book</p> <p>20 alone?</p> <p>21 MS. CITERA: Object to the form.</p> <p>22 MR. CAHILL: Objection.</p>
Page 203	Page 205
<p>1 A. Yes.</p> <p>2 Q. And are they maintained in such a way</p> <p>3 that they are believed to be reliable?</p> <p>4 A. Yes.</p> <p>5 Q. I notice on this page, Bates labeled</p> <p>6 Red Book 00598 of Exhibit 22, there are multiple</p> <p>7 notations about communication by Red Book to</p> <p>8 Abbott concerning the AWP policy.</p> <p>9 Would you agree with me?</p> <p>10 MS. CITERA: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. Why is it that Red Book would make</p> <p>13 efforts to repeatedly notify manufacturers of the</p> <p>14 AWP policy?</p> <p>15 MS. CITERA: Objection to form?</p> <p>16 A. It's our internal company policy to</p> <p>17 reconfirm every year with the manufacturer that</p> <p>18 our AWP policy is still in existence.</p> <p>19 Q. Looking down at the last entry of this</p> <p>20 chronology, it's dated August 20th, 2002, and</p> <p>21 I'll read it for the benefit of the record: "AWP</p> <p>22 equal WAC plus 25 percent (previously provided)."</p>	<p>1 A. I have no knowledge.</p> <p>2 Q. Okay.</p> <p>3 Looking at the entry dated March 5th,</p> <p>4 2003, reading, "Effective 3/3/03 price list from</p> <p>5 Abbott did a 25 percent markup from previous</p> <p>6 notes," and then there's several drug names</p> <p>7 listed.</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. What does that phrase, "effective</p> <p>11 3/3/03 price list from Abbott did a 25 percent</p> <p>12 markup," indicate to you as Red Book's corporate</p> <p>13 representative?</p> <p>14 MS. CITERA: Objection, form.</p> <p>15 A. It indicates to me that we received a</p> <p>16 price list from Abbott on that date, and per the</p> <p>17 previous notes from 8/20/02, AWP was calculated</p> <p>18 using the 25 percent formula that was provided.</p> <p>19 Q. Provided by who?</p> <p>20 A. By Abbott.</p> <p>21 Q. To Red Book; correct?</p> <p>22 A. To Red Book.</p>

52 (Pages 202 to 205)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 206	Page 208
<p>1 Q. And in turn Red Book published that 2 information; correct? 3 MS. CITERA: Objection to the form. 4 A. Correct. 5 (October 2000 verification forms for 6 Abbott Pharmaceuticals marked Exhibit Minne 023 7 for identification.) 8 Q. Now, if you could, Miss Minne, take a 9 look at what's been marked as Exhibit 23. 10 Are you familiar with documents such as 11 Exhibit 23? 12 MS. CITERA: Object to the form. 13 (Pause) 14 A. I'm familiar that this is a PLV, yes. 15 Q. PLV, again, being the verification 16 forms; correct? 17 A. Correct. 18 Q. And this one happens to be for Abbott 19 Pharmaceuticals dated in October of 2000; 20 correct? 21 A. Correct. 22 Q. And there's AWP's listed; correct?</p>	<p>1 Off the record at 13:41. 2 (Pause) 3 THE VIDEOGRAPHER: This is the 4 videographer. 5 This begins tape number four at 13:51. 6 We're back on the record at this time. 7 (Document with first page entitled 8 "Abbott Pharmaceutical Markup History" marked 9 Exhibit Minne 024 for identification.) 10 BY MR. ANDERSON: 11 Q. Okay, Miss Minne, before I move on to 12 some other documents, I wanted to mark a couple 13 of other markup history documents. 14 This is Exhibit 24. And I'm going to 15 particularly be focusing on the second page of 16 this one. 17 Do you agree the second page of Exhibit 18 24 appears to be titled "Abbott Hospital Products 19 Company Pricing/Markup History"? 20 A. Correct. 21 Q. And the first page is "Abbott 22 Pharmaceutical Markup History" that we had</p>
Page 207	Page 209
<p>1 A. Correct. 2 Q. As well as direct prices and WACs; 3 correct? 4 A. Correct. 5 Q. And then throughout the document, 6 apparently Krista Kleidon, an Abbott 7 representative, has signed each page; correct? 8 MS. CITERA: Objection, form. 9 A. Correct. 10 Q. So this would be a practical example 11 of how a drug manufacturer would verify the 12 prices being published by Red Book on an annual 13 basis? 14 MS. CITERA: Object to the form. 15 MR. SWEENEY: Object to the form. 16 A. Correct. 17 MR. ANDERSON: Let's go off the record 18 for just a second. We're not taking a break 19 necessarily, unless you need one. 20 THE WITNESS: I'm fine. 21 THE VIDEOGRAPHER: This is the 22 videographer.</p>	<p>1 already talked about; correct? 2 A. Correct. 3 Q. All right. And then this page, the 4 second page, of Exhibit 24 sets forth the 5 chronology of communications between Red Book and 6 Abbott Hospital Products concerning the 7 publication of drug prices; is that right? 8 MS. CITERA: Object to the form. 9 A. Correct. 10 Q. For instance, looking at the entry 11 dated May 16th, 2002, it reads, "FDB changed 12 markup to 25 percent on January '02 for all price 13 changes. Per manufacturer we are to continue 14 using their usual markup, 18.75 percent, per 15 Jerrie." 16 Did I read that correctly? 17 A. Yes. 18 Q. Are you familiar with a woman who used 19 to work at Abbott known as Jerrie Cicerale? 20 A. No, I'm not. 21 Q. Do you believe that this entry in the 22 Red Book markup history for Abbott Hospital</p>

53 (Pages 206 to 209)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 210	Page 212
<p>1 Products is referring to a person at Abbott 2 providing direction to Red Book as to how to 3 publish AWP? 4 MS. CITERA: Object to the form. 5 A. Yes. 6 MS. CITERA: Also object as outside the 7 scope. 8 A. That would be my assumption. 9 Q. Then looking at the entry dated April 10 3rd, 2003, it reads, "Spoke to Jerrie Cicera on 11 April 3rd, 2003 at 1:50 p.m. Would not confirm 12 AWP. Sent her a fax confirming the Red Book 13 policy on AWP of 20 percent markup (MDX applied 14 markup)." 15 Did I read that correctly? 16 A. Yes. 17 Q. Was there sometime around 2003 when 18 some companies were more hesitant to publish AWP 19 information than they had been before? 20 MS. CITERA: Object to the form. 21 MR. SWEENEY: Object to the form. 22 MR. GASTWIRTH: Object to the form.</p>	<p>1 Do you have any reason to question the 2 accuracy of these entries about the pricing 3 representations? 4 A. No. 5 MS. CITERA: Object to the form. 6 (January 1, 1995 through September 18, 7 2003 records of Roxane pricing/markup history 8 marked Exhibit Minne 025 for identification.) 9 Q. Now, similarly, Miss Minne, take a 10 look at what's been marked as Minne Exhibit 25, 11 which is another markup history for Roxane. 12 Do you agree that this appears to be 13 Red Book's records of the Roxane company 14 pricing/markup history? 15 MR. GASTWIRTH: Objection. 16 A. Yes. 17 Q. And this is dated January 1st, '95 18 through September 18th, '03; correct? 19 A. Correct. 20 Q. And looking, for instance, at the 21 entry -- the last entry, which is also dated 22 September 18th, 2003, it reads, "Clarification:</p>
Page 211	Page 213
<p>1 A. Starting in the early 2000s, it became 2 much more common. 3 Q. Does Red Book have any understanding 4 why that is? 5 MS. CITERA: Object to the form. 6 MR. GASTWIRTH: Object to the form. 7 A. No. 8 Q. Look at the entry dated May 16th, 9 2002. It reads, "AWP equal inner pack dollar 10 (trade) less 5 percent plus 25 percent (solid 11 size equal units per inner pack (18.75 percent) 12 April '97, per Michael Heggie." 13 Did I read that correctly? 14 A. Yes. 15 Q. Are you familiar with the fact that 16 there was a markup percentage known by Red Book 17 concerning Abbott Hospital Products of 18.75 18 percent to create an AWP? 19 MS. CITERA: Object to the form. 20 A. My only knowledge of that would be 21 what's written here. 22 Q. All right.</p>	<p>1 Per Lesli Paoletti, for all products Roxane 2 supplies AWP. E-mail confirmation filed." 3 Did I read that correctly? 4 A. Yes. 5 Q. Does that statement indicate to you 6 that Roxane was directly providing AWP 7 information to Red Book for publication? 8 MR. GASTWIRTH: Objection to form. 9 A. Yes. 10 Q. Looking at the last entry shown on 11 Exhibit 25, which is dated May 14th, 2001, it 12 reads, "Manuf provides AWP. Do not list WAC even 13 if provided." 14 Did I read that correctly? 15 A. Correct. 16 Q. The statement "Manuf provides AWP" is 17 just reflecting that, at least according to Red 18 Book's records, Roxane was directly providing AWP 19 for Red Book's publication; correct? 20 MR. GASTWIRTH: Objection to form. 21 A. Correct. 22 Q. All right. What does the statement</p>

54 (Pages 210 to 213)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 214

1 "Do not list WAC even if provided" indicate to
 2 you, as Red Book's corporate representative?
 3 A. It indicates to me that there were
 4 some, maybe all, products that WAC was -- where
 5 Roxane was providing WAC. However, they did not
 6 -- it does not appear that they wanted it listed
 7 in our electronic files, so we would have honored
 8 that request.
 9 Q. All right. So not only with Roxane in
 10 this particular instance, but just as a general
 11 matter, if a drug company directed Red Book to
 12 not publish WAC pricing, whether in print form or
 13 electronic form, Red Book would honor that
 14 request?
 15 MR. CAHILL: Objection to form.
 16 A. Yes.
 17 Q. Do you have an understanding, as Red
 18 Book's corporate representative, why some drug
 19 manufacturers did not want their WACs published?
 20 MS. CITERA: Objection to form.
 21 MR. GASTWIRTH: Objection to form.
 22 A. I do not know.

Page 215

1 Q. Is there any instance where Red Book
 2 disregarded a manufacturer's instructions
 3 concerning the publication of WAC, whether in
 4 print form or electronic form?
 5 MR. CAHILL: Objection to form.
 6 They don't publish WAC in the print, is
 7 my understanding.
 8 MR. ANDERSON: Well, I know, I
 9 understand that, Tom. That's why I'm including
 10 both categories.
 11 MR. CAHILL: Okay.
 12 A. Can you repeat the question?
 13 Q. Yes, I will.
 14 Is there any instance to Red Book's
 15 knowledge of Red Book disregarding a drug
 16 company's instructions with respect to the
 17 publication of WAC pricing, whether it be in
 18 print form or electronic form?
 19 MR. GASTWIRTH: Objection to form.
 20 A. Not that I'm aware of.
 21 Q. So to the extent any WACs were being
 22 published in electronic form over the years by

Page 216

1 Red Book, that was pursuant to a direct
 2 instruction by a drug company?
 3 MR. GASTWIRTH: Objection to form.
 4 MR. SWEENEY: Object to the form.
 5 A. They might not have directly told us
 6 to print them, but the fact that they were
 7 supplying them to us was our understanding that
 8 they were okay that we did publish them unless
 9 otherwise stated, as it says here.
 10 Q. I see your distinction. But if a drug
 11 company had caused a WAC to be reported to Red
 12 Book, but then in turn gone the next step and
 13 said, "By the way, though, don't publish the
 14 WACs," Red Book would have honored that drug
 15 company's request?
 16 MR. GASTWIRTH: Objection to form.
 17 A. Yes.
 18 Q. Is there any list summarizing the
 19 identities of the manufacturers who requested
 20 that WAC not be published for their drugs?
 21 A. Not that I'm aware of.
 22 Q. So that information would only be

Page 217

1 reflected in the company files such as, for
 2 instance, this example of the company
 3 pricing/markup history marked Exhibit 25?
 4 A. Correct.
 5 Q. Okay.
 6 Do you, as Red Book's company
 7 representative, understand that Red Book has
 8 company pricing/markup histories for all of the
 9 companies that have NDCs published by Red Book?
 10 A. There would be markup or pricing
 11 information in this type of format only if the
 12 manufacturer was not supplying AWP directly, you
 13 know, if they had supplied us instead with a
 14 formula or wouldn't supply anything, in which
 15 case we applied the AWP policy.
 16 Q. Oh, I see. Okay.
 17 So if a drug company is directly
 18 reporting AWP, and in turn Red Book's publishing
 19 those AWP, there may not be a company
 20 pricing/markup history; is that correct?
 21 A. That's very possible.
 22 Q. The reason I ask is I've looked for

55 (Pages 214 to 217)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 218	Page 220
<p>1 the Dey Laboratories pricing history in Red 2 Book's records, and I can't find it. 3 Does the absence of a company pricing 4 history or markup history indicate to you, as the 5 company representative for Red Book, that that 6 drug manufacturer is most likely directly 7 reporting AWP to Red Book? 8 MS. LORENZO: Objection to form. 9 A. That would be my assumption. 10 MR. ANDERSON: Tom, to your knowledge, 11 have any records concerning a drug company's 12 pricing history been withheld? 13 MR. CAHILL: No. I'm not aware of any 14 -- 15 MS. ROSENSTOCK: No. 16 MR. CAHILL: -- withholding of such 17 information. 18 MR. ANDERSON: Thanks. 19 (Form letter to Abbott/Ross Data Vendor 20 marked Exhibit Minne 026 for identification.) 21 Q. Now I'm going to really move quickly. 22 If you could, take a look, Miss Minne,</p>	<p>1 product that was coming on the market, so 2 information regarding form, route, that type of 3 stuff, that would have been entered into the 4 database, and then along with some verifications 5 that all the pieces at the bottom -- the people 6 signed off when it had been completed. 7 Q. To assist Red Book in keeping records 8 of all of its data input? 9 A. Correct. 10 MS. CITERA: Object to the form. 11 Q. And then the second page of Exhibit 26 12 is what, ma'am? 13 A. This is a communication from the 14 manufacturer telling us their product, size, NDC, 15 and then the prices associated with that product. 16 Q. And does that appear to be one of the 17 standard ways in which Red Book's made aware of 18 product pricing upon launch by a drug company? 19 MS. CITERA: Objection. 20 MR. LONERGAN: Objection. 21 MR. GASTWIRTH: Objection to form. 22 A. Yes, very standard.</p>
Page 219	Page 221
<p>1 at Exhibit 26. 2 Does this exhibit appear to be a form 3 in which a drug company would report the pricing 4 of products upon launch? 5 MS. CITERA: Objection to form. 6 MR. GASTWIRTH: Objection to form. 7 MS. ROSENSTOCK: Do you have another 8 copy? 9 MR. ANDERSON: I don't. I don't even 10 have a copy right now. 11 A. This front page is something that 12 internally the Red Book staff in Montvale 13 created. 14 Q. Yes. 15 A. So the manufacturer did not supply 16 this page. 17 Q. I understand that. I need to phrase 18 my question better, so I'll do that. 19 The first page of Exhibit 26 is what, 20 ma'am? 21 A. It is simply a cover sheet with the 22 information -- it looks like this was a new</p>	<p>1 Q. And, in fact, it looks like it's a 2 form letter to "Abbott/Ross Data Vendor"; 3 correct? 4 A. Correct. 5 Q. And I've got some more examples of 6 these, Miss Minne. 7 (Price change notification sent to Red 8 Book by Abbott marked Exhibit Minne 027 for 9 identification.) 10 Q. Do you agree Exhibit 27 appears to be 11 another example of a launch or, for that matter, 12 potentially a price change sent to data vendors 13 such as Red Book? 14 MS. CITERA: I'm sorry, which is 15 Exhibit 27, this one (indicating)? 16 MR. ANDERSON: It is, yeah. 17 MS. CITERA: Can you repeat the 18 question? 19 MR. ANDERSON: I will. In fact, I'll 20 slow it down in just a second. 21 Q. Miss Minne, if you would, take a look 22 at Exhibit 27.</p>

56 (Pages 218 to 221)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 222	Page 224
<p>1 Does this appear to be a price change</p> <p>2 notification sent to Red Book by Abbott?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 A. Yes, it does.</p> <p>5 Q. And it's apparently a form letter</p> <p>6 titled "Dear Abbott/Ross Data Vendor"; correct?</p> <p>7 A. Correct.</p> <p>8 MR. CAHILL: Objection.</p> <p>9 Q. And does this look like a standard</p> <p>10 mechanism, or an example of a standard mechanism,</p> <p>11 by which Red Book would be made aware of price</p> <p>12 changes?</p> <p>13 MR. GASTWIRTH: Object to the form.</p> <p>14 MS. CITERA: Object to the form.</p> <p>15 A. Yes.</p> <p>16 Q. And this, for instance, includes trade</p> <p>17 price, wholesale price and AWP price; correct?</p> <p>18 MS. CITERA: Object to the form.</p> <p>19 A. Correct.</p> <p>20 Q. And in instances where Red Book could</p> <p>21 be receiving direct representations of AWP</p> <p>22 prices, such as those shown in Exhibit 27 from a</p>	<p>1 one second.</p> <p>2 MR. ANDERSON: Sure.</p> <p>3 PLV.</p> <p>4 MS. CITERA: I mean, they are</p> <p>5 consecutive, the numbers on the bottom --</p> <p>6 MR. ANDERSON: Well, we can keep it --</p> <p>7 MS. CITERA: That's fine.</p> <p>8 MR. ANDERSON: -- I'm going to focus</p> <p>9 primarily my questions on the PLV.</p> <p>10 MS. CITERA: Okay.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Miss Minne, if you could, after</p> <p>13 looking at the exhibit, confirm for me that the</p> <p>14 first few pages, specifically the first three</p> <p>15 pages, and then the next 21 pages, are an example</p> <p>16 of PLV, which is a verification form, completed</p> <p>17 by Abbott Pharmaceuticals?</p> <p>18 MS. CITERA: Object to the form.</p> <p>19 A. Correct.</p> <p>20 Q. And then the first three pages are</p> <p>21 just some Red Book documentation that pertains to</p> <p>22 the completion of the PLV; correct?</p>
Page 223	Page 225
<p>1 drug company, would Red Book in turn publish</p> <p>2 those AWP's?</p> <p>3 MR. GASTWIRTH: Objection to form.</p> <p>4 MS. CITERA: Object to the form.</p> <p>5 A. Yes.</p> <p>6 (Documentation for Abbott</p> <p>7 Pharmaceuticals verification form marked</p> <p>8 Exhibit Minne 028 for identification.)</p> <p>9 Q. Miss Minne, could you take a look,</p> <p>10 briefly, at Exhibit 28.</p> <p>11 Miss Minne, I've got a copy problem</p> <p>12 here. You're welcome to look at the entire</p> <p>13 document, but I only intended to mark the pages</p> <p>14 01132 through 01145, which is the 21 of 21 pages</p> <p>15 of the PVL.</p> <p>16 MR. ANDERSON: Tony, if you don't have</p> <p>17 a problem, I'm going to rip off the back pages</p> <p>18 and remove them from this exhibit. They just --</p> <p>19 they got mistakenly attached. It's not part of</p> <p>20 that PVL, it's part of Abbott's file, but it's</p> <p>21 not part of the PVL.</p> <p>22 MS. CITERA: Just let me look for just</p>	<p>1 MS. CITERA: Object to the form.</p> <p>2 A. The first two are, yes.</p> <p>3 Q. Right, thank you.</p> <p>4 And these pages that comprise this</p> <p>5 verification form all include AWP information,</p> <p>6 direct price information and WACs; correct?</p> <p>7 MS. CITERA: Object to the form.</p> <p>8 A. Correct.</p> <p>9 Q. And these were -- these prices, AWP,</p> <p>10 direct and WAC, were printed and provided to</p> <p>11 Abbott for verification by Red Book; correct?</p> <p>12 MS. CITERA: Object to the form.</p> <p>13 A. Correct.</p> <p>14 Q. And look, if you could, at what's</p> <p>15 labeled Red Book 01139. On that page there are</p> <p>16 several Erythromycin products listed; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then in the lower right-hand</p> <p>19 corner someone has handwritten "Verified changes</p> <p>20 not made"; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you believe that that would be a</p>

57 (Pages 222 to 225)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 226	Page 228
<p>1 notation made by Abbott's personnel?</p> <p>2 A. No.</p> <p>3 MS. CITERA: Object to the form.</p> <p>4 Q. This would be a data entry notice -- I</p> <p>5 mean, a notation made by Red Book personnel?</p> <p>6 A. Yes.</p> <p>7 MS. CITERA: Object to the form.</p> <p>8 Q. What does that notation, "Verified</p> <p>9 changes not made," indicate to you?</p> <p>10 MS. CITERA: Object to the form.</p> <p>11 A. I do not know what she meant by that</p> <p>12 statement.</p> <p>13 Q. In the WAC column, do you see how</p> <p>14 there's several tick marks?</p> <p>15 A. Yes.</p> <p>16 Q. What do the tick marks indicate to</p> <p>17 you?</p> <p>18 MS. CITERA: Object to the form.</p> <p>19 A. I do not know if those were from the</p> <p>20 manufacturer or those were made internally by Red</p> <p>21 Book staff.</p> <p>22 Q. If Abbott Pharmaceuticals had chosen</p>	<p>1 price"; correct?</p> <p>2 A. Yes.</p> <p>3 MS. CITERA: Objection to the form.</p> <p>4 Q. In situations such as this where Red</p> <p>5 Book would receive price change notifications,</p> <p>6 specifically, for instance, the AWP prices, would</p> <p>7 Red Book input those?</p> <p>8 MR. GASTWIRTH: Object to the form.</p> <p>9 MS. CITERA: Object to the form.</p> <p>10 A. Yes.</p> <p>11 Q. And in turn publish those prices?</p> <p>12 MS. CITERA: Object to the form.</p> <p>13 A. Yes.</p> <p>14 (1999 price change notification by</p> <p>15 Abbott Pharmaceuticals marked Exhibit Minne 030</p> <p>16 for identification.)</p> <p>17 Q. Does Exhibit 30 look like another</p> <p>18 example of AWP price reporting by Abbott</p> <p>19 Pharmaceuticals to Red Book?</p> <p>20 MS. CITERA: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. And that one's dated '99; correct?</p>
Page 227	Page 229
<p>1 to update or otherwise change any of the pricing</p> <p>2 published on this page for these Erythromycin</p> <p>3 products and had crossed out the printed price</p> <p>4 and written in another price, would Red Book have</p> <p>5 input those changes and published those prices</p> <p>6 accordingly?</p> <p>7 MS. CITERA: Object to the form.</p> <p>8 A. Yes.</p> <p>9 (1995 price change notification by</p> <p>10 Abbott Pharmaceuticals marked Exhibit Minne 029</p> <p>11 for identification.)</p> <p>12 Q. Miss Minne, if you could, take a look</p> <p>13 at what's been marked as Exhibit 29.</p> <p>14 Does this appear to be a price change</p> <p>15 notification by Abbott Pharmaceuticals?</p> <p>16 MS. CITERA: Object to the form.</p> <p>17 A. Yes.</p> <p>18 Q. And the cover letter's addressed to</p> <p>19 "Dear Abbott/Ross Data Vendor"; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And the prices that are listed are</p> <p>22 titled "Trade price," "Wholesale price" and "AWP</p>	<p>1 A. Correct.</p> <p>2 Q. And the other one was dated '95;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 (Previously used format of Red Book</p> <p>6 product verification list marked Exhibit Minne</p> <p>7 031 for identification.)</p> <p>8 Q. All right. Now, if you could, take a</p> <p>9 look at what's been marked as Exhibit 31.</p> <p>10 Are you familiar with this type of</p> <p>11 document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It is -- my understanding, from my</p> <p>15 historical knowledge, this is the old format of</p> <p>16 the PLV.</p> <p>17 Q. That's what I thought.</p> <p>18 When was the change made from this</p> <p>19 format of the PLV, or also known as the</p> <p>20 verification forms, to the more standard format</p> <p>21 that we've seen in the other exhibits?</p> <p>22 MR. GASTWIRTH: Objection to form.</p>

58 (Pages 226 to 229)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 230	Page 232
<p>1 A. I don't know the exact date.</p> <p>2 Q. Something that's kind of curious to me</p> <p>3 is, you see in that upper left-hand corner how</p> <p>4 there's a date --</p> <p>5 A. Yes.</p> <p>6 Q. -- what appears to be a date listed,</p> <p>7 but the last digit in the year is cut off on</p> <p>8 every page.</p> <p>9 Do you know why that is?</p> <p>10 A. No, I don't.</p> <p>11 Q. But nonetheless, this was a -- this</p> <p>12 was the format in which Red Book notified</p> <p>13 manufacturers of the pricing on the drugs for</p> <p>14 their labeler code, and in turn sought</p> <p>15 verification from the manufacturers for those</p> <p>16 prices; correct?</p> <p>17 MR. GASTWIRTH: Object to form.</p> <p>18 MS. CITERA: Objecting to form.</p> <p>19 A. That is my understanding of this form.</p> <p>20 Q. And this form, which is marked as</p> <p>21 Exhibit 31, includes a standard data field titled</p> <p>22 "AWP"; right?</p>	<p>1 manufacturer and were not a result of AWP policy.</p> <p>2 Q. Thank you. I think your answer was</p> <p>3 more clear than my question.</p> <p>4 MR. ANDERSON: At this point I'll pass</p> <p>5 the witness.</p> <p>6 MR. CARROLL: Why don't we go off the</p> <p>7 record.</p> <p>8 THE VIDEOGRAPHER: This is the</p> <p>9 videographer.</p> <p>10 Off the record at 14:16.</p> <p>11 (Pause)</p> <p>12 THE VIDEOGRAPHER: Back on the record,</p> <p>13 14:18.</p> <p>14 EXAMINATION</p> <p>15 BY MR. CARROLL:</p> <p>16 Q. Good afternoon, Miss Minne. My name's</p> <p>17 James Carroll. I represent the City of New York</p> <p>18 and various New York counties, as well as the</p> <p>19 State of Iowa. I have a few documents that I'd</p> <p>20 like to put in front of you and ask you a couple</p> <p>21 questions.</p> <p>22 (Document bearing Bates Nos. Red Book</p>
Page 231	Page 233
<p>1 A. Correct.</p> <p>2 Q. "Direct price"; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And "WAC"?</p> <p>5 A. Correct.</p> <p>6 Q. And at least with respect to this</p> <p>7 company, Abbott Pharmaceuticals, every single one</p> <p>8 of those fields is populated?</p> <p>9 MS. CITERA: Object to the form.</p> <p>10 A. It appears that way, yes.</p> <p>11 Q. Oh -- switching gears on you slightly,</p> <p>12 Miss Minne, to the extent that there's a spread</p> <p>13 between WAC and AWP in the pricing published by</p> <p>14 Red Book which exceeds 20 percent, is it fair to</p> <p>15 say that that spread must have been generated by</p> <p>16 the manufacturers or the manufacturers'</p> <p>17 instructions?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 MR. GASTWIRTH: Objection to form.</p> <p>20 A. If there's a greater than 20 percent</p> <p>21 difference, it would indicate to me that both of</p> <p>22 those prices had been supplied by the</p>	<p>1 04693 and 04694 marked Exhibit Minne 032 for</p> <p>2 identification.)</p> <p>3 Q. And the first document, as Exhibit 32.</p> <p>4 Are you familiar with Exhibit 32?</p> <p>5 A. Familiar just in the fact that it's a</p> <p>6 PL -- product verification list.</p> <p>7 Q. And the product verification list was</p> <p>8 a document that Red Book routinely used in the</p> <p>9 ordinary course of its business from 1990 to the</p> <p>10 present; is that correct?</p> <p>11 MR. GASTWIRTH: Objection to form.</p> <p>12 A. I believe it was used as far back as</p> <p>13 1990. I can't verify.</p> <p>14 MR. SWEENEY: Hold on, one minute.</p> <p>15 Who's representing Baxter? Anybody?</p> <p>16 MR. CARROLL: For the record, Exhibit</p> <p>17 32 is a document with the Bates numbers Red Book</p> <p>18 06 -- 04693 to 04694, dated October 11th, 2002.</p> <p>19 It's a two-page document, Red Book product</p> <p>20 listing verification to Baxter Healthcare.</p> <p>21 Q. And this product listing verification</p> <p>22 would have been provided to Baxter to verify the</p>

59 (Pages 230 to 233)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 234	Page 236
<p>1 accuracy of Baxter's AWP's, WACs and other pricing 2 information included on the product listing 3 verification for products that were to be 4 published in Red Book or Red Book Update; is that 5 correct? 6 MR. WALLACH: Objection. 7 A. Correct. 8 Q. And if you look, at the bottom on each 9 page indicates that this document was signed on 10 -- by an individual on 9/16/02. 11 And I believe you testified that the 12 signature would correspond to the company, and in 13 this case Baxter; is that correct? 14 MR. WALLACH: Objection. 15 A. Correct. 16 Q. And the signature on the product 17 listing verification indicates that Baxter in 18 fact verified the accuracy of the pricing for 19 Baxter's drugs to Red Book; is that correct? 20 MR. WALLACH: Objection. 21 A. It indicates to me that they saw this 22 form, and had the opportunity to make changes if</p>	<p>1 Q. And Red Book would have relied on 2 Baxter for the accuracy of those prices; is that 3 correct? 4 MR. WALLACH: Objection to the form. 5 A. We would have relied on them to supply 6 the prices. 7 Q. Is it fair to say that if a price for 8 Baxter drugs products was published in Red Book 9 from 1990 to the present, that the prices were 10 verified by Baxter? 11 MR. WALLACH: Objection. 12 A. I do not know if Baxter would have 13 verified that the prices were accurate because I 14 don't know what your definition of accurate is. 15 Q. Would it be fair to say that they -- 16 that Baxter verified the prices per a product 17 listing verification if the pricing for Baxter's 18 drugs were published in the Red Book? 19 MR. WALLACH: Objection. 20 A. Yes, this signature indicates to me 21 that they had the opportunity to look at the 22 prices.</p>
Page 235	Page 237
<p>1 they wished, and they chose not to make changes. 2 Q. On this form they chose -- I would ask 3 -- it indicates "Okay with changes." 4 A. Well, I mean, I guess I'm talking just 5 specific to prices. 6 MR. SWEENEY: Objection, that's not 7 what it says. 8 MR. WALLACH: Objection if there was a 9 question there. 10 Q. In fact, if Baxter had made changes on 11 this form, Red Book would change the price to 12 reflect Baxter's changes; is that correct? 13 A. Correct. 14 Q. And Red Book, in the ordinary course 15 of its business, relied on Baxter to verify the 16 accuracy of AWP's and WACs for all Baxter drugs 17 that were published in Red Book or Red Book 18 Update; is that correct? 19 MR. WALLACH: Object to the form. 20 MR. CAHILL: Object to the form. 21 A. Baxter would have been our source of 22 pricing information for their products, yes.</p>	<p>1 Q. Do you have any reason to doubt the 2 accuracy of the prices verified in the product 3 listing verifications by Baxter? 4 MR. WALLACH: Objection. 5 A. I have no reason to doubt that these 6 prices are not what Baxter supplied to us. 7 Q. Okay. 8 (July 6, 2004 Bayer Corporation product 9 listing verification marked Exhibit Minne 033 for 10 identification.) 11 Q. Miss Minne, what I'm handing to you 12 that's been marked as Exhibit 33 is a Red Book 13 product listing verification dated 7 -- July 6, 14 2004 to Bayer Corporation. 15 Are you familiar with Exhibit 33? 16 A. Just to the extent that it is another 17 product listing verification. 18 Q. And is this a product listing 19 verification that Red Book routinely used in the 20 ordinary course of its business from 1990 to the 21 present? 22 MR. GASTWIRTH: Objection to form.</p>

60 (Pages 234 to 237)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 238	Page 240
<p>1 A. Again, not knowing when they 2 implemented this process, if it went back to '90 3 or not, but, yes.</p> <p>4 Q. And I'm sorry if I misheard the 5 testimony earlier, but how far back do you know 6 -- are you familiar, as the corporate rep for Red 7 Book, that a product listing verification was 8 used?</p> <p>9 MS. TORGERSON: Objection, form.</p> <p>10 A. I know they went back to the late 11 '90s. I don't know how much farther back than 12 that they went.</p> <p>13 Q. Would it be fair to say that they were 14 used from 1997 on?</p> <p>15 MS. TORGERSON: Objection, form.</p> <p>16 A. I think that would be fair, yes.</p> <p>17 Q. And this is a product listing 18 verification that Red Book provided to Bayer to 19 verify the AWP, direct price and WAC prices for 20 Bayer products that were to be published in Red 21 Book and Red Book Update; is that correct?</p> <p>22 A. Correct.</p>	<p>1 Q. And is it fair to say that for any 2 pricing of Bayer products published in the Red 3 Book from at least 1997 to the present, that the 4 prices were verified by Bayer?</p> <p>5 A. They would have been verified via this 6 form, yes.</p> <p>7 (Document bearing Bates Nos. Red Book 8 07589 through 07597 marked Exhibit Minne 034 for 9 identification.)</p> <p>10 Q. What I'm handing to you, which is 11 marked as Exhibit 34, is a Red Book product 12 listing verification with the Bates numbers Red 13 Book 07589 through 07597, to Endo Generic 14 Products, dated October 11th, 2001.</p> <p>15 And do you recognize this as the Red 16 Book product listing verification?</p> <p>17 A. Yes.</p> <p>18 Q. And is this product listing 19 verification to Endo Generic Products a document 20 that Red Book routinely used in the ordinary 21 course of its business?</p> <p>22 MS. TORGERSON: Objection, form.</p>
Page 239	Page 241
<p>1 Q. And the signature indicates that, in 2 fact, Bayer verified those prices; is that 3 correct?</p> <p>4 MS. TORGERSON: Objection to form.</p> <p>5 A. Correct.</p> <p>6 Q. And the fact that there are changes 7 made, I believe you testified that Red Book would 8 have made those changes per Bayer's instructions; 9 is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And in the ordinary course of Red 12 Book's business, Red Book relied on Bayer to 13 verify the accuracy of its AWP's and WAC's for all 14 Bayer drugs that were published in the Red Book; 15 is that correct?</p> <p>16 MR. CAHILL: Objection, form.</p> <p>17 A. We would have relied on Bayer to 18 supply that information, yes.</p> <p>19 Q. And you have no reason to doubt the 20 accuracy of the information supplied by Bayer; is 21 that correct?</p> <p>22 A. Correct.</p>	<p>1 A. Yes.</p> <p>2 Q. And this product listing verification 3 was provided to Endo Generic Products to verify 4 the accuracy of Endo's AWP's and WAC's that were to 5 be published in Red Book and Red Book Update; is 6 that correct?</p> <p>7 MR. FARQUHAR: Objection, leading.</p> <p>8 A. It was provided to them so they could 9 see what we had listed for their products, right.</p> <p>10 Q. And the signature on the verification 11 indicates that Endo, in fact, verified the AWP 12 and WAC pricing for Endo drugs in the Red Book; 13 is that correct?</p> <p>14 MR. FARQUHAR: Objection, leading.</p> <p>15 A. I can only assume they looked at them. 16 I can't, I can't --</p> <p>17 Q. Well, what does that -- what does the 18 signature at the bottom indicate to you?</p> <p>19 A. It indicates they had the document. 20 Now, whether they went through every single price 21 and looked at it, I can't verify that.</p> <p>22 Q. Okay. But from Red Book's</p>

61 (Pages 238 to 241)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 242	Page 244
<p>1 perspective, the fact that they signed this</p> <p>2 product listing verification and did or did not</p> <p>3 change prices, Red Book followed those</p> <p>4 indications in the product listing verification;</p> <p>5 is that correct?</p> <p>6 MR. FARQUHAR: Objection, leading.</p> <p>7 A. Correct.</p> <p>8 Q. And in the ordinary course of its</p> <p>9 business, Red Book relied on Endo to verify the</p> <p>10 AWP's and WAC's for all Endo products for which it</p> <p>11 supplied pricing information to be published in</p> <p>12 the Red Book; is that correct?</p> <p>13 MR. FARQUHAR: Objection, leading.</p> <p>14 A. Correct.</p> <p>15 Q. And is it fair to say that a price for</p> <p>16 Endo's drugs that was published in the Red Book</p> <p>17 from at least 1997 to the present were verified</p> <p>18 by product listing verifications?</p> <p>19 MR. FARQUHAR: Objection, leading.</p> <p>20 Objection, lack of foundation.</p> <p>21 A. Yes.</p> <p>22 (July 6, 2004 Ethex Corporation product</p>	<p>1 A. Yes.</p> <p>2 Q. And at the bottom of each page you'll</p> <p>3 notice that there's a signature. And is it fair</p> <p>4 to say that the signature indicates that the</p> <p>5 prices were in fact verified by Endo -- Ethex</p> <p>6 Corporation, excuse me?</p> <p>7 A. As far as Red Book is concerned, yes.</p> <p>8 Q. And in -- and Red Book, in the</p> <p>9 ordinary course of its business, relied on Ethex</p> <p>10 to verify the pricing supplied to Red Book for</p> <p>11 all Ethex products that were published in the Red</p> <p>12 Book; is that correct?</p> <p>13 MS. TORGERSON: Objection, form.</p> <p>14 A. Yes.</p> <p>15 Q. And is it fair to say that for a price</p> <p>16 for Ethex drugs that was published in the Red</p> <p>17 Book from at least 1997 to the present, that the</p> <p>18 prices were, in fact, verified by Ethex</p> <p>19 Corporation?</p> <p>20 MS. LORENZO: Objection.</p> <p>21 MS. TORGERSON: Objection, form.</p> <p>22 A. It's the assumption that Red Book</p>
Page 243	Page 245
<p>1 listing verification marked Exhibit Minne 035 for</p> <p>2 identification.)</p> <p>3 Q. Miss Minne, what I'm handing to you,</p> <p>4 which is Exhibit 35, is a Red Book product</p> <p>5 listing verification dated July 6, 2004 for Ethex</p> <p>6 Corporation.</p> <p>7 MR. CARROLL: Somebody from Ethex?</p> <p>8 MR. SWEENEY: There's somebody on the</p> <p>9 phone from Ethex.</p> <p>10 Q. Do you recognize this as a Red Book</p> <p>11 product listing verification?</p> <p>12 A. Yes.</p> <p>13 Q. And is this a product listing</p> <p>14 verification that Red Book routinely used in the</p> <p>15 ordinary course of its business?</p> <p>16 MS. TORGERSON: Objection, form.</p> <p>17 A. Yes.</p> <p>18 Q. And this was a Red Book form --</p> <p>19 product listing verification that was provided to</p> <p>20 Ethex Corporation to verify the accuracy of its</p> <p>21 AWP's that were -- and WAC prices that were</p> <p>22 published in the Red Book; is that correct?</p>	<p>1 makes when they sign this PLV form.</p> <p>2 (October 11, 2002 Forest</p> <p>3 Pharmaceuticals product listing verification</p> <p>4 marked Exhibit Minne 036 for identification.)</p> <p>5 Q. Miss Minne, what I'm handing you,</p> <p>6 which is marked as Exhibit 36, is a Red Book</p> <p>7 product listing verification dated October 11th,</p> <p>8 2002 to Forest Pharmaceuticals.</p> <p>9 MR. CARROLL: Anyone? Anyone?</p> <p>10 Q. And is this a Red Book product listing</p> <p>11 verification that you're familiar with?</p> <p>12 A. Yes.</p> <p>13 Q. And is it a product listing</p> <p>14 verification that Red Book routinely used in the</p> <p>15 ordinary course of its business?</p> <p>16 MR. GASTWIRTH: Objection, form.</p> <p>17 A. Yes.</p> <p>18 Q. And is this the product listing --</p> <p>19 type of product listing verification form that</p> <p>20 was provided to Forest Pharmaceuticals to verify</p> <p>21 the accuracy of its AWP's and WAC's that were</p> <p>22 published in the Red Book?</p>

62 (Pages 242 to 245)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 246	Page 248
<p>1 MS. EPPS: Objection to form.</p> <p>2 A. Yes.</p> <p>3 Q. And I draw your attention to the</p> <p>4 bottom, it shows there is a signature dated -- on</p> <p>5 each page. And my question is, the signature on</p> <p>6 the verification indicates that Forest</p> <p>7 Pharmaceuticals in fact verified the AWP and WAC</p> <p>8 pricing information for Forest Pharmaceutical</p> <p>9 drugs that were published in the Red Book; is</p> <p>10 that correct?</p> <p>11 MS. EPPS: Objection to form.</p> <p>12 A. That is the Red Book assumption.</p> <p>13 Q. And if there was a change indicated,</p> <p>14 would Red Book make the change reflecting Forest</p> <p>15 Pharmaceuticals' instructions?</p> <p>16 A. Yes.</p> <p>17 Q. And Red Book in the ordinary course of</p> <p>18 its business relied on Forest Pharmaceuticals to</p> <p>19 verify the accuracy of AWP's and WAC's for all</p> <p>20 Forest Pharmaceutical drugs that were published</p> <p>21 in the Red Book; is that correct?</p> <p>22 MS. EPPS: Objection to form.</p>	<p>1 product listing verification marked Exhibit Minne</p> <p>2 037 for identification.)</p> <p>3 Q. Miss Minne, what has been handed to</p> <p>4 you as Exhibit 37 is a Red Book product listing</p> <p>5 verification dated July 25th, 2003 to Fujisawa</p> <p>6 Healthcare.</p> <p>7 Are you familiar with this as a Red</p> <p>8 Book product listing verification?</p> <p>9 A. Yes.</p> <p>10 Q. And is this a product -- type of</p> <p>11 product listing verification that Red Book</p> <p>12 routinely used in the ordinary course of its</p> <p>13 business?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 A. Yes.</p> <p>16 Q. And is this a product listing</p> <p>17 verification Red Book provided to Fujisawa to</p> <p>18 verify the accuracy of Fujisawa AWP and WAC</p> <p>19 pricing for Fujisawa drugs that were published in</p> <p>20 the Red Book?</p> <p>21 A. Yes.</p> <p>22 Q. And if you'll look at the bottom of</p>
Page 247	Page 249
<p>1 A. Yes.</p> <p>2 Q. And if, in fact, the price for Forest</p> <p>3 Pharmaceutical products was published in the Red</p> <p>4 Book from at least 1997 to the present, the</p> <p>5 prices would have been verified by Forest; is</p> <p>6 that correct?</p> <p>7 MS. EPPS: Objection to form.</p> <p>8 A. That is Red Book's assumption.</p> <p>9 MR. CAHILL: Is there any way we can --</p> <p>10 obviously we sent questions. Is there a way we</p> <p>11 can try to do these all at once so that -- in</p> <p>12 other words, if the questions are the same and</p> <p>13 the answers are going to be the same? If there's</p> <p>14 no way to do it, there's no way to do it...</p> <p>15 MR. FARQUHAR: Well, we don't know who</p> <p>16 we're going to trial with and who we're not going</p> <p>17 to trial with.</p> <p>18 MR. CAHILL: So you need each one</p> <p>19 separately?</p> <p>20 MR. CARROLL: Yes.</p> <p>21 I'll go as far as I can.</p> <p>22 (July 25, 2003 Fujisawa Healthcare</p>	<p>1 each page, it indicates that it is signed by a</p> <p>2 Carol Robey.</p> <p>3 Does that signature indicate to you</p> <p>4 that Fujisawa in fact verified the pricing of its</p> <p>5 products that was published in the Red Book?</p> <p>6 A. Yes.</p> <p>7 Q. And in the ordinary course of its</p> <p>8 business, Red Book relied on Fujisawa to verify</p> <p>9 the accuracy of the AWP's and WAC's for Fujisawa</p> <p>10 drugs that were published in the Red Book; is</p> <p>11 that correct?</p> <p>12 MS. LORENZO: Objection to form.</p> <p>13 A. Yes.</p> <p>14 Q. And if a Fujisawa -- if a price for a</p> <p>15 Fujisawa drug was published in the Red Book from</p> <p>16 at least 1997 to the present, that price would</p> <p>17 have been verified by Fujisawa; is that correct?</p> <p>18 A. That is the Red Book assumption.</p> <p>19 (July 6, 2004 Eli Lilly & Company</p> <p>20 product listing verification marked Exhibit Minne</p> <p>21 038 for identification.)</p> <p>22 Q. Miss Minne, what I'm handing you,</p>

63 (Pages 246 to 249)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 250	Page 252
<p>1 which has been marked as Exhibit 38, is a Red 2 Book product identification listing dated 7 -- 3 July 6, 2004 to Eli Lilly & Company. 4 Do you recognize this as a product -- 5 Red Book product listing verification? 6 A. Yes. 7 Q. Is this a product listing verification 8 that Red Book routinely used in the ordinary 9 course of its business? 10 MR. GASTWIRTH: Objection to form. 11 A. Yes. 12 Q. And this is a product listing 13 verification provided to you to verify the 14 accuracy of Eli Lilly's AWP's and WAC's that were 15 to be published for Eli Lilly products in the Red 16 Book; is that correct? 17 A. Yes. 18 MR. FARQUHAR: Objection, leading. 19 Q. And I draw your attention to the 20 bottom of each page, and it indicates that there 21 is a signature by Carol Butterfield. 22 Does that signature on the verification</p>	<p>1 identification.) 2 Q. Miss Minne, what I'm handing to you as 3 Exhibit 39 is a Red Book product listing 4 verification dated October 1st, 2001 to 5 Glaxo-Wellcome. 6 Are you familiar with Exhibit 39? 7 A. Yes, in that it's a form provided by 8 Red Book. 9 Q. Okay. And it's a document that Red 10 Book routinely used in the ordinary course of its 11 business; is that correct? 12 MR. GASTWIRTH: Objection to form. 13 A. Yes. 14 Q. And this was a product listing 15 verification that was provided to Glaxo-Wellcome 16 to verify of the accuracy of Glaxo-Wellcome AWP's 17 and WAC's that were published in the Red Book; is 18 that correct? 19 A. Yes. 20 Q. And if you notice at the bottom of 21 each page there is a signature, and that 22 signature -- does that signature indicate that --</p>
Page 251	Page 253
<p>1 indicate that Eli Lilly in fact verified the 2 accuracy of the AWP and WAC pricing for Eli Lilly 3 drugs to be published in the Red Book? 4 MR. FARQUHAR: Objection, leading. 5 Objection, foundation. 6 A. Yes. 7 Q. And Red Book, in the ordinary course 8 of its business, relied on Eli Lilly to verify 9 the accuracy of the AWP's and WAC's for all Eli 10 Lilly drugs that were published in the Red Book; 11 is that correct? 12 MR. FARQUHAR: Objection, leading. 13 A. Yes. 14 Q. And if a price for an Eli Lilly drug 15 was published in the Red Book, it would have been 16 verified by Eli Lilly from at least 1997 to the 17 present; is that correct? 18 MR. FARQUHAR: Objection, leading. 19 Objection, lack of foundation. 20 A. That is our assumption. 21 (October 1, 2001 Glaxo-Wellcome product 22 listing verification marked Exhibit Minne 039 for</p>	<p>1 does that signature indicate to Red Book that 2 Glaxo-Wellcome did, in fact, verify the pricing 3 contained in Exhibit 39? 4 A. Yes. 5 Q. And in the ordinary course of its 6 business, Red Book relied on Glaxo-Wellcome to 7 verify the accuracy of AWP's and WAC's for all 8 Glaxo-Wellcome drugs that were published in the 9 Red Book; is that correct? 10 MR. FARQUHAR: Objection, leading. 11 A. Yes. 12 Q. And to the extent that there was -- 13 MR. CARROLL: Excuse me. 14 Q. -- there was a price in the Red Book 15 for a Glaxo-Wellcome drug, it was Red Book's 16 assumption that it was in fact verified by Glaxo; 17 is that correct? 18 MR. FARQUHAR: Objection, leading. 19 A. Yes. 20 (August 16, 2001 Roche Laboratories 21 product listing verification marked Exhibit Minne 22 040 for identification.)</p>

64 (Pages 250 to 253)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 254	Page 256
<p>1 Q. Miss Minne, what I'm handing you, 2 which has been marked as Exhibit 40, is a Red 3 Book product listing verification dated August 4 16th, 2001 to Roche Laboratories, a Division of 5 Hoffman-La Roche. 6 Are you familiar with this as a Red 7 Book product listing verification? 8 A. Yes. 9 Q. And is this a product listing 10 verification that Red Book routinely used in the 11 ordinary course of its business? 12 MR. GASTWIRTH: Objection to form. 13 MS. LORENZO: Objection to form. 14 Q. And this was a product listing 15 verification that was provided to Roche 16 Laboratories to verify the accuracy of Roche AWP 17 and WAC pricing that was to be published in the 18 Red Book; is that correct? 19 MS. LORENZO: Objection to form. 20 A. Yes. 21 Q. And if you'll notice at the bottom of 22 each page there's a signature dated August 9th,</p>	<p>1 which has been marked as Exhibit 41, is a Red 2 Book product listing verification to Boehringer 3 Ingelheim Pharmaceuticals, and requesting that 4 the response be by October 11th, 2002. 5 MR. GASTWIRTH: Objection to form. 6 What's your question? 7 MR. CARROLL: Pardon? 8 MR. GASTWIRTH: If there's a question 9 pending, objection to form. 10 MR. CARROLL: Great. 11 Q. Are you familiar with this as a Red 12 Book product listing verification? 13 MR. GASTWIRTH: Objection to form. 14 A. Yes. 15 Q. And is this a document that Red Book 16 routinely used in the ordinary course of its 17 business? 18 MR. GASTWIRTH: Objection to form. 19 A. Yes. 20 Q. And is this a product listing 21 verification that Red Book provided to Boehringer 22 Ingelheim Pharmaceuticals to verify the accuracy</p>
Page 255	Page 257
<p>1 2001. 2 Does that signature indicate to you 3 that in fact Roche Laboratory verified the 4 accuracy of the AWP and WAC pricing for Roche 5 drugs that were published in the Red Book? 6 A. Yes. 7 Q. And in the ordinary course of its 8 business, Red Book relied on Roche Laboratories 9 to verify the accuracy of the AWP and WACs for 10 Roche drugs that were published in the Red Book; 11 is that correct? 12 A. Yes. 13 Q. And in fact, if a drug price for Roche 14 products was published in the Red Book from at 15 least 1997 to the present, it would have been 16 verified by Roche Laboratories; is that correct? 17 A. It's our assumption. 18 (Boehringer Ingelheim Pharmaceuticals 19 product listing verification signed August 22, 20 2002 marked Exhibit Minne 041 for 21 identification.) 22 Q. Miss Minne, what I'm handing you,</p>	<p>1 of Boehringer AWP and WACs that were published 2 in Red Book? 3 MR. GASTWIRTH: Objection to form. 4 A. Yes. 5 Q. And if you'll please look at the 6 bottom of each page, there is a signature dated 7 August 22nd, 2002. 8 Does that signature indicate to you, as 9 representative of Red Book, that Boehringer 10 Ingelheim Pharmaceutical in fact verified the 11 accuracy of AWP and WAC pricing for Boehringer 12 drugs published in Red Book? 13 MR. CAHILL: Objection to form. 14 A. Yes. 15 Q. And in fact, Red Book, in the ordinary 16 course of its business, relied on Boehringer 17 Ingelheim Pharmaceuticals to verify the accuracy 18 of AWP and WACs for all Boehringer Ingelheim 19 pharmaceuticals published in the Red Book; is 20 that correct? 21 MR. GASTWIRTH: Objection to form. 22 A. Yes.</p>

65 (Pages 254 to 257)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 258

1 Q. And if, in fact, a Boehringer
2 Ingelheim drug -- if a price for a Boehringer
3 Ingelheim Pharmaceuticals drug was published in
4 the Red Book from at least 1997 to the present,
5 Red Book would assume that the price had been
6 verified by Boehringer Ingelheim Pharmaceuticals;
7 is that correct?

8 MR. GASTWIRTH: Objection to form,
9 calls for speculation.

10 A. Yes.

11 (September 18, 2001 Bedford
12 Laboratories product listing verification marked
13 Exhibit Minne 042 for identification.)

14 Q. Miss Minne, what I'm putting in front
15 of you, which has been marked as Exhibit 42, is a
16 Red Book pricing verification with a stamped date
17 of September 18th, 2001 to Bedford Laboratories.

18 Are you familiar with this as a pricing
19 list -- a price -- a product listing verification
20 --

21 MR. CARROLL: I'm sorry.

22 Q. -- a product listing verification?

Page 259

1 MR. GASTWIRTH: Objection to form.

2 A. Yes.

3 Q. And is this a document that Red Book
4 routinely uses in the ordinary course of its
5 business?

6 MR. GASTWIRTH: Objection to form.

7 A. Yes.

8 Q. And is this a product listing
9 verification form that was provided to Bedford
10 Laboratories to verify the accuracy of Bedford
11 AWP and WAC pricing that were published in the
12 Red Book?

13 MR. GASTWIRTH: Objection to form.

14 A. Yes.

15 Q. And I draw your attention to the
16 bottom of -- to the various pages. And to the
17 extent there are signatures, do those signatures
18 indicate that Bedford Laboratories in fact
19 verified the price accuracy of the AWP and WAC
20 pricing for Bedford Laboratory products that were
21 published in the Red Book?

22 MR. GASTWIRTH: Objection to form.

Page 260

1 A. Yes.

2 Q. And in the ordinary course of its
3 business, Red Book relied on Bedford Laboratories
4 to verify the accuracy of AWP and WACs for all
5 Bedford Laboratory drugs that were published in
6 the Red Book?

7 MR. GASTWIRTH: Objection to form.

8 Q. Is that correct?

9 A. Yes.

10 Q. And if, in fact, a price for a Bedford
11 Laboratory product was published in the Red Book
12 from at least 1997 to the present, it is Red
13 Book's assumption that the price was, in fact,
14 verified by Bedford Laboratories; is that
15 correct?

16 MR. GASTWIRTH: Objection to form,
17 calls for speculation.

18 A. Yes.

19 (October 1, 2001 Barr Laboratories
20 product listing verification marked Exhibit Minne
21 043 for identification.)

22 Q. Miss Minne, I've placed in front of

Page 261

1 you, which has been marked as Exhibit 43, a
2 product -- a Red Book product listing
3 verification, requesting a response by October
4 1st, 2001, to Barr Laboratories.

5 Are you familiar with this as a Red
6 Book products listing verification?

7 MR. PARISH: Objection, form.

8 A. Yes.

9 Q. Is this a document that Red Book
10 routinely used in the ordinary course of its
11 business?

12 MR. PARISH: Objection, form.

13 A. Yes.

14 Q. And was this a -- is this a product
15 listing verification form that Red Book provided
16 to Barr Laboratories to verify the accuracy of
17 Barr AWP and WAC prices that were published in
18 Red Book?

19 MR. PARISH: Objection to form.

20 A. Yes.

21 Q. And you'll notice there's a signature
22 at the bottom of the page.

66 (Pages 258 to 261)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 262

1 Does that signature indicate to you
2 that Barr Laboratories in fact verified the
3 accuracy of AWP and WAC pricing for Barr drugs
4 that were published in the Red Book?

5 MR. PARISH: Objection, form.

6 A. Yes.

7 Q. And in the ordinary course of its
8 business did Red Book in fact rely on Barr
9 Laboratories to verify the accuracy of AWP and
10 WAC pricing for Barr drugs that were published in
11 the Red Book?

12 MR. PARISH: Objection to form.

13 A. Yes.

14 Q. And if in fact a price for a Barr
15 Laboratories product was published in the Red
16 Book from at least 1997 to the present, the
17 product -- the price would have been verified by
18 Barr Laboratories; is that correct?

19 MR. PARISH: Objection, form, calls for
20 speculation.

21 A. Yes.

22 (October 2, 2001 Merck & Company

Page 263

1 product listing verification marked Exhibit Minne
2 044 for identification.)

3 Q. Miss Minne, what I'm handing you,
4 which is marked as Exhibit 44, is a product
5 listing verification with a stamp date of October
6 2nd, 2001 to -- addressed to Merck & Company.

7 Are you familiar with this as a Red
8 Book product listing verification?

9 MR. GASTWIRTH: Objection to form.

10 A. Yes.

11 Q. And is this --

12 MR. FUNKHOUSER: This is Rob
13 Funkhouser.

14 Can you give me the Bates number?

15 MR. CARROLL: Yeah. I'm sorry, Rob.
16 It's Red Book 10281 through 10389.

17 MR. FUNKHOUSER: And does this form
18 relate to NDCs for which you're asserting spreads
19 in excess of 30 percent?

20 MR. CARROLL: Yes, I believe there are
21 some on here.

22 MR. FUNKHOUSER: Well, have you done

Page 264

1 anything to confirm that? Because there was some
2 issue with discovery being stayed as to NDCs that
3 did exceed that threshold.

4 MR. CARROLL: No, I have not. However
5 -- hmmm...

6 I'm happy to look it up in a break, but
7 I'm sure they are, because I've been told that
8 there are drugs from our revised Exhibit B that
9 are in this exhibit. In fact, all of our drugs
10 that are in our revised Exhibit B are in this
11 exhibit, and if you want me to -- I could happily
12 pull up one drug that's over 30 percent, to which
13 we are entitled to discovery.

14 MR. FUNKHOUSER: All right, that's
15 fine, I just want to make sure you confirm your
16 compliance with CMO 33.

17 If you've done that, go ahead and
18 proceed.

19 MR. CARROLL: Well, I personally
20 haven't done that, so --

21 MS. KAPLAN: I think revised Exhibit D
22 includes allegations for drugs with spreads above

Page 265

1 30 --

2 MR. CARROLL: Yes, above and below.

3 BY MR. CARROLL:

4 Q. Are you familiar with this as a Red
5 Book product listing verification?

6 A. Yes.

7 Q. And is this a document that Red Book
8 routinely used in the ordinary course of its
9 business?

10 MR. CAHILL: Objection to form.

11 A. Yes.

12 Q. And is this a product listing
13 verification that Red Book provided to Merck to
14 verify the accuracy of Merck AWP and WAC pricings
15 that were published in the Red Book?

16 MR. FUNKHOUSER: Objection to form.

17 A. Yes.

18 Q. And if you'll look at the bottom,
19 there's a signature on each page of the exhibit.

20 Does that signature indicate to Red
21 Book that Merck in fact verified the accuracy of
22 the AWP and WAC pricing for Merck products that

67 (Pages 262 to 265)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 266	Page 268
<p>1 were published in -- pricing of Merck products 2 were published in Red Book? 3 MR. FUNKHOUSER: Objection, form, 4 foundation. 5 A. Yes. 6 Q. And Red Book, in the ordinary course 7 of its business, relied on Merck to verify the 8 accuracy of AWP and WAC pricing for all Merck 9 products for which pricing was published in the 10 Red Book; is that correct? 11 MR. FUNKHOUSER: Same objections. 12 A. Yes. 13 Q. And in fact, if a price for a Merck 14 product was published in the Red Book from at 15 least 1997 to the present, the prices would have 16 been verified by Merck; is that correct? 17 MR. FUNKHOUSER: Objection, move to 18 strike. 19 A. Yes, that is our assumption. 20 (Document bearing Bates No. Red Book 21 09936 marked Exhibit Minne 045 for 22 identification.)</p>	<p>1 Does this signature indicate to you 2 that MedImmune in fact verified the accuracy of 3 the AWP and WAC pricing for MedImmune drugs 4 published in Red Book? 5 MR. FARQUHAR: Objection, leading. 6 A. Yes. 7 Q. And in the ordinary course of its 8 business, Red Book relied upon MedImmune to 9 verify the accuracy of AWP and WAC pricing for 10 all MedImmune products that were published in the 11 Red Book? 12 MR. FARQUHAR: Objection, leading -- 13 Q. Is that correct? 14 MR. FARQUHAR: -- objection, lack of 15 foundation. 16 Q. And in fact, if a price for a 17 MedImmune product was published in the Red Book 18 from at least 1997 to the present, the prices 19 were in fact verified by MedImmune; is that 20 correct? 21 MR. FARQUHAR: Objection, leading. 22 Objection, lack of foundation.</p>
Page 267	Page 269
<p>1 Q. Miss Minne, what I've handed you as 2 Exhibit 45 is a one-page document with Bates Red 3 Book 09936, a product listing verification, the 4 Bates -- stamp date of September 9, 1999, to 5 MedImmune. 6 Are you familiar with this as a Red 7 Book product listing verification form? 8 A. Yes. 9 Q. And is this a document that Red Book 10 routinely used in the ordinary course of its 11 business? 12 MR. GASTWIRTH: Objection to form. 13 A. Yes. 14 Q. And is this a product listing 15 verification form provided to MedImmune to verify 16 the accuracy of MedImmune AWP and WAC pricing 17 that was published in the Red Book for MedImmune 18 products? 19 A. Yes. 20 MR. FARQUHAR: Objection, leading. 21 Q. I draw your attention to the signature 22 at the bottom of the page.</p>	<p>1 A. Yes, that is our assumption. 2 (Document bearing Bates Nos. Red Book 3 14957 through 14961 marked Exhibit Minne 046 for 4 identification.) 5 Q. Miss Minne, what I'm handing you, 6 which has been marked as Exhibit 46, is a product 7 -- Red Book product listing verification with a 8 stamp date -- it says September 18th, with no 9 year, but it appears to be in 1998. The Bates 10 number is Red Book 14957 through 14961, to Serono 11 Labs. 12 Are you familiar with this as a product 13 -- Red Book product listing verification? 14 A. Yes. 15 Q. And is it a document that Red Book 16 routinely used in the ordinary course of its 17 business? 18 MR. GASTWIRTH: Objection, form. 19 A. Yes. 20 Q. And is this a product listing 21 verification that Red Book provided to Serono 22 Labs to verify the accuracy of Serono AWP and WAC</p>

68 (Pages 266 to 269)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 270	Page 272
<p>1 pricing that was published in the Red Book?</p> <p>2 MR. FARQUHAR: Objection, leading.</p> <p>3 Objection, lack of foundation.</p> <p>4 A. Yes.</p> <p>5 Q. And if you notice, there's a signature</p> <p>6 at the bottom of each page.</p> <p>7 Does -- do -- does the signature</p> <p>8 indicate that Serono Labs in fact verified the</p> <p>9 accuracy of AWP and WAC pricing for Serono Lab</p> <p>10 drugs that were published in the Red Book?</p> <p>11 MR. CAHILL: Same objections.</p> <p>12 A. Yes.</p> <p>13 Q. And Red Book, in the ordinary course</p> <p>14 of its business, relied upon Serono Labs to</p> <p>15 verify the accuracy of AWP and WAC pricing for</p> <p>16 all Serono Lab products for which pricing was</p> <p>17 published in the Red Book; is that correct?</p> <p>18 MR. FARQUHAR: Same objections.</p> <p>19 A. Yes.</p> <p>20 Q. And if in fact a price for a Serono</p> <p>21 Labs product was published in the Red Book from</p> <p>22 at least 1997 to the present, the prices were</p>	<p>1 Purdue Frederick Company to verify the accuracy</p> <p>2 of Purdue Frederick Company's AWP and WACs that</p> <p>3 were published in Red Book?</p> <p>4 MR. FARQUHAR: Objection, leading.</p> <p>5 Objection, lack of foundation.</p> <p>6 A. Yes.</p> <p>7 Q. And you'll notice that there is a</p> <p>8 signature on the bottom of each page of this</p> <p>9 exhibit.</p> <p>10 Does the signature indicate that the</p> <p>11 Purdue Frederick Company in fact verified the</p> <p>12 accuracy of AWP and WAC pricing for the Purdue</p> <p>13 Frederick Company pricing for drugs published in</p> <p>14 the Red Book?</p> <p>15 MR. FARQUHAR: Same objections.</p> <p>16 A. Yes.</p> <p>17 Q. And within the ordinary course of its</p> <p>18 business, Red Book relied on the Purdue Frederick</p> <p>19 Company to verify the accuracy of AWP and WAC</p> <p>20 pricing for all Purdue Frederick drugs for which</p> <p>21 pricing was published in Red Book.</p> <p>22 Is that correct?</p>
Page 271	Page 273
<p>1 verified by Serono Labs; is that correct?</p> <p>2 MR. CAHILL: Same objection.</p> <p>3 A. That is our assumption.</p> <p>4 (Document bearing Bates Nos. Red Book</p> <p>5 13418 through 13426 marked Exhibit Minne 047 for</p> <p>6 identification.)</p> <p>7 Q. Miss Minne, what I'm handing you is</p> <p>8 marked as Exhibit 47. It is a Red Book product</p> <p>9 listing verification with a stamped date of</p> <p>10 August 20th, 2001, Bates stamped Red Book 13418</p> <p>11 through 13426, sent to the Purdue Frederick</p> <p>12 Company.</p> <p>13 Are you familiar with this as a Red</p> <p>14 Book product listing verification form?</p> <p>15 A. Yes.</p> <p>16 Q. Is it a document that Red Book</p> <p>17 routinely used in the ordinary course of its</p> <p>18 business?</p> <p>19 MR. GASTWIRTH: Objection to the form.</p> <p>20 A. Yes.</p> <p>21 Q. And is this a product listing</p> <p>22 verification form that Red Book provided to the</p>	<p>1 MR. FARQUHAR: Same objections.</p> <p>2 A. Yes.</p> <p>3 Q. And if a price was published for a</p> <p>4 Purdue Frederick Company drug in the Red Book</p> <p>5 from at least 1997 to the present, the prices</p> <p>6 were, in a fact, verified by the Purdue Frederick</p> <p>7 Company; is that correct?</p> <p>8 MR. FARQUHAR: Same objections.</p> <p>9 A. That is our assumption.</p> <p>10 MR. GASTWIRTH: Do you think you might</p> <p>11 be going for a bit longer? Do we need to take a</p> <p>12 break soon?</p> <p>13 MR. CARROLL: I don't need to take a</p> <p>14 break, I'm fine. I have a couple more there, and</p> <p>15 then more in there, but they're not as many.</p> <p>16 They're mostly in this box (indicating).</p> <p>17 You guys need a break?</p> <p>18 Why don't we take -- off the record.</p> <p>19 THE VIDEOGRAPHER: Off the record at</p> <p>20 15:08. Ends tape number four.</p> <p>21 (Recess taken)</p> <p>22 THE VIDEOGRAPHER: This is the</p>

69 (Pages 270 to 273)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 274

1 videographer. Back on the record at 15:24.
 2 (July 25h, 2003 Pfizer USA Pharma Group
 3 product listing verification marked Exhibit Minne
 4 048 for identification.)
 5 BY MR. CARROLL:
 6 Q. Miss Minne, what I've handed you as
 7 Exhibit 48 is a product listing verification
 8 dated July 25th, 2003 to Pfizer USA Pharma Group.
 9 Do you recognize this -- are you
 10 familiar with this as a Red Book product listing
 11 verification?
 12 A. Yes.
 13 Q. Is this a document that Red Book
 14 routinely used in the ordinary course of its
 15 business?
 16 MS. KAPLAN: Objection to form.
 17 A. Yes.
 18 Q. And is this a product listing
 19 verification form that read --
 20 MR. CARROLL: Strike that.
 21 Q. Did Red Book provide this product
 22 listing verification form to Pfizer?

Page 275

1 A. Yes.
 2 Q. And was this product listing
 3 verification form provided to Pfizer to verify
 4 the accuracy of Pfizer AWP and WAC pricing for
 5 its products that were published in the Red Book?
 6 MS. KAPLAN: Objection to form.
 7 A. Yes.
 8 Q. And if you'll notice it, there is a
 9 signature on the bottom of each page.
 10 Does that signature indicate to you
 11 that Pfizer in fact did verify the AWP and WAC
 12 pricing for the Pfizer products for which pricing
 13 was published in the Red Book?
 14 MS. KAPLAN: Objection.
 15 A. Yes.
 16 Q. And did Red Book in the ordinary
 17 course of its business rely upon Pfizer to verify
 18 the accuracy of AWP and WAC pricing for all
 19 Pfizer drugs that were published in the Red Book?
 20 MS. KAPLAN: Objection to form.
 21 A. Yes.
 22 Q. And if, in fact, a price for a Pfizer

Page 276

1 drug was published in a -- in the Red Book from
 2 at least 1997 to the present, did Pfizer verify
 3 the prices per a product listing verification?
 4 MS. KAPLAN: Objection to form.
 5 A. That is our assumption.
 6 (July 25, 2003 Greenstone product
 7 listing verification marked Exhibit Minne 049 for
 8 identification.)
 9 Q. What I'm handing you, which is marked
 10 as Exhibit 49, is a Red Book product listing
 11 verification dated July 25th, 2003, addressed to
 12 Greenstone.
 13 Is this a product listing verification
 14 form that you're familiar with --
 15 MR. CARROLL: Strike that.
 16 Q. Are you familiar with this Red Book
 17 product listing verification form?
 18 A. Yes.
 19 Q. And is it a document that Red Book
 20 routinely used in the ordinary course of its
 21 business?
 22 MR. GASTWIRTH: Objection to form.

Page 277

1 A. Yes.
 2 Q. And did Red Book provide this product
 3 listing verification form to Greenstone to verify
 4 the accuracy of Greenstone AWP and WAC pricing
 5 that was published in the Red Book?
 6 MS. KAPLAN: Objection to form.
 7 MS. LORENZO: Objection to form.
 8 A. Yes.
 9 Q. And you'll notice there is a signature
 10 on each page, at the bottom of each page.
 11 Does the signature indicate that
 12 Greenstone, in fact, verified the AWP and WAC
 13 pricing for its products that were published in
 14 the Red Book?
 15 MS. KAPLAN: Objection to form, lack of
 16 foundation.
 17 A. Yes.
 18 Q. And in the ordinary course of its
 19 business did Red Book rely upon Greenstone to
 20 verify the accuracy of AWP and WAC pricing for
 21 the Greenstone products published in the Red
 22 Book?

70 (Pages 274 to 277)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 278	Page 280
<p>1 MS. KAPLAN: Objection to form, lack of 2 foundation. 3 A. Yes. 4 Q. And if a price for a Greenstone 5 product was published in the Red Book from at 6 least 1997 to the present, did Red Book rely upon 7 Greenstone to verify the accuracy of that price? 8 MS. KAPLAN: Object to the form, lack 9 of foundation. 10 A. Yes, that was their assumption. 11 (October 11, 2002 Pharmacia Corporation 12 product listing verification marked Exhibit Minne 13 050 for identification.) 14 Q. What I've handed you as Exhibit 50 is 15 a Red Book product listing verification form with 16 a respond date by October 11th, 2002 to Pharmacia 17 Corporation. 18 Are you familiar with Exhibit 50? 19 A. Yes, as a document that we produced. 20 Q. And is Exhibit 50 a document that Red 21 Book routinely used in the ordinary course of its 22 business?</p>	<p>1 foundation. 2 A. Yes. 3 Q. And to the extent a price for a 4 Pharmacia drug was published in the Red Book from 5 at least 1997 to the present, did Red Book rely 6 on Pharmacia to verify the accuracy of that 7 pricing? 8 MS. KAPLAN: Objection to form, lack of 9 foundation. 10 A. Yes. 11 (Document bearing Bates Nos. Red Book 12 13003 and 13002 marked Exhibit Minne 051 for 13 identification.) 14 (Document bearing Bates Nos. Red Book 15 13199 and 13200 marked Exhibit Minne 052 for 16 identification.) 17 (Document bearing Bates Nos. Red Book 18 13198 and 13197 marked Exhibit Minne 053 for 19 identification.) 20 (Document bearing Bates No. Red Book 21 13196 marked Exhibit Minne 054 for 22 identification.)</p>
Page 279	Page 281
<p>1 MS. KAPLAN: Objection, form. 2 A. Yes. 3 Q. And is this Red Book product listing 4 verification -- 5 MR. CARROLL: Strike that. 6 Q. Did Red Book provide the Red Book 7 product listing verification to Pharmacia 8 Corporation to verify the accuracy of Pharmacia 9 Corporation AWP's and WACs that were published in 10 the Red Book? 11 MS. KAPLAN: Object to the form. 12 A. Yes. 13 Q. And to the extent there were any 14 changes made at the request of Pharmacia, did Red 15 Book make those changes? 16 MS. KAPLAN: Objection, form. 17 A. Yes. 18 Q. And did Red Book rely on Pharmacia 19 Corporation to verify the accuracy of AWP and WAC 20 pricing for Pharmacia drugs that were published 21 in the Red Book? 22 MS. KAPLAN: Objection, form, lack of</p>	<p>1 (Document bearing Bates No. Red Book 2 13015 marked Exhibit Minne 055 for 3 identification.) 4 (Document bearing Bates Nos. Red Book 5 13109 through 13113 marked Exhibit Minne 056 for 6 identification.) 7 (Document bearing Bates Nos. Red Book 8 13090 and 13091 marked Exhibit Minne 057 for 9 identification.) 10 (Document bearing Bates No. Red Book 11 13086 marked Exhibit Minne 058 for 12 identification.) 13 (Document bearing Bates No. Red Book 14 13087 marked Exhibit Minne 059 for 15 identification.) 16 Q. I'm going to hand you a group of 17 exhibits. 18 (Pause) 19 MR. CARROLL: Can we go off the record 20 for a second. 21 THE VIDEOGRAPHER: This is the 22 videographer. Off the record at 15:32.</p>

71 (Pages 278 to 281)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 282	Page 284
<p>1 (Pause)</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 videographer. Back on the record, 15:33.</p> <p>4 Q. Miss Minne, I've handed you exhibits</p> <p>5 marked 51 through 59.</p> <p>6 If you could please review each one,</p> <p>7 and each should have a Bates label Red Book at</p> <p>8 the bottom, with a specific Bates number.</p> <p>9 Can you confirm that for each of the</p> <p>10 Exhibits 51 through 59?</p> <p>11 A. I confirm that.</p> <p>12 Q. And were these Exhibits 51 through 59</p> <p>13 produced from Red Book's files?</p> <p>14 A. It appears that way, yes.</p> <p>15 Q. And were these documents, Exhibit 51</p> <p>16 through 59, regularly maintained business records</p> <p>17 of Red Book?</p> <p>18 A. Yes, they are.</p> <p>19 Q. And were they kept in the ordinary</p> <p>20 course of business?</p> <p>21 A. Yes.</p> <p>22 Q. Is there any reason to question the</p>	<p>1 routinely used in the ordinary course of its</p> <p>2 business?</p> <p>3 MS. TORGERSON: Objection, form.</p> <p>4 Objection, leading.</p> <p>5 A. Yes.</p> <p>6 Q. Did Red Book provide this product</p> <p>7 listing verification form to Schering Corporation</p> <p>8 to verify the accuracy of Schering Corporation</p> <p>9 AWP's and WACs that were published in the Red</p> <p>10 Book?</p> <p>11 MS. TORGERSON: Objection, form and</p> <p>12 leading, and misstates the document and</p> <p>13 mischaracterizes the record.</p> <p>14 A. Yes.</p> <p>15 Q. If you'll notice, there is a signature</p> <p>16 at the bottom of each page.</p> <p>17 Does that signature indicate to you</p> <p>18 that Schering Corporation in fact verified the</p> <p>19 accuracy of AWP and WAC pricing for Schering</p> <p>20 products for which pricing was published in the</p> <p>21 Red Book?</p> <p>22 MS. TORGERSON: Objection, form.</p>
Page 283	Page 285
<p>1 authenticity of these exhibits as records</p> <p>2 maintained in Red Book's records?</p> <p>3 A. No.</p> <p>4 Q. Did you understand the question?</p> <p>5 A. I did.</p> <p>6 MS. KAPLAN: Objection.</p> <p>7 MR. CARROLL: That's all I have for</p> <p>8 those exhibits.</p> <p>9 (September 26, 1997 Schering</p> <p>10 Corporation product listing verification marked</p> <p>11 Exhibit Minne 060 for identification.)</p> <p>12 Q. Miss Minne, what I'm handing you,</p> <p>13 which has been marked as Exhibit 60, is a Red</p> <p>14 Book product listing verification that requests a</p> <p>15 response by September 26, 1997, to Schering</p> <p>16 Corporation.</p> <p>17 Are you familiar with Exhibit 60?</p> <p>18 MS. TORGERSON: Objection, form and</p> <p>19 leading.</p> <p>20 A. Yes, that is a product verification</p> <p>21 listing.</p> <p>22 Q. Is this a document that Red Book</p>	<p>1 Objection, leading, mischaracterizes the</p> <p>2 document, mischaracterizes the testimony.</p> <p>3 A. Yes.</p> <p>4 Q. And in the ordinary course of its</p> <p>5 business did Red Book rely on Schering</p> <p>6 Corporation to verify the accuracy of AWP and WAC</p> <p>7 pricing for all Schering Corporation drugs for</p> <p>8 which pricing was published in the Red Book?</p> <p>9 MS. TORGERSON: Objection, form.</p> <p>10 Objection, leading, mischaracterizes the</p> <p>11 document, mischaracterizes the evidence.</p> <p>12 A. Yes.</p> <p>13 Q. And if a price for a Schering</p> <p>14 Corporation product was published in the Red</p> <p>15 Book, from at least 1997 to the present, did Red</p> <p>16 Book rely upon Schering Corporation to verify the</p> <p>17 accuracy of that pricing?</p> <p>18 MS. TORGERSON: Objection, form.</p> <p>19 Objection, leading, mischaracterizes the</p> <p>20 document, mischaracterizes the evidence and</p> <p>21 assumes facts not in evidence.</p> <p>22 A. Yes.</p>

72 (Pages 282 to 285)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 286	Page 288
<p>1 MR. CARROLL: That's all I have on 2 that. 3 (October 27, 2000 Warrick 4 Pharmaceuticals product listing verification 5 marked Exhibit Minne 061 for identification.) 6 Q. Miss Minne, what I've handed you as 7 Exhibit 61 is a Red Book product listing 8 verification with a "please respond by" date of 9 October 27th, 2000, addressed to Warrick 10 Pharmaceuticals. 11 Are you familiar with Exhibit 61? 12 MS. TORGERSON: Objection, form. 13 Objection, leading. 14 A. Yes. 15 Q. Is this a document that Red Book 16 routinely used in the ordinary course of its 17 business? 18 MS. TORGERSON: Objection, form. 19 Objection, leading. 20 A. Yes. 21 Q. Did Red Book provide this product 22 listing verification form to Warrick</p>	<p>1 that change? 2 MS. TORGERSON: Objection, form. 3 Objection, leading, assumes facts not in 4 evidence, and it mischaracterizes the document, 5 mischaracterizes the evidence. 6 A. Yes. 7 Q. And did Red Book in the ordinary 8 course of its business rely on Warrick to verify 9 the accuracy of AWP and WAC pricing for all 10 Warrick products for which pricing was published 11 in the Red Book? 12 MS. TORGERSON: Objection, form. 13 Objection -- get the routine going -- objection, 14 form. Objection, leading, mischaracterizes the 15 document, mischaracterizes the evidence, assumes 16 facts not in evidence, and calls for speculation. 17 A. Yes. 18 Q. To the extent a price for a Warrick 19 Pharmaceutical product was published in the Red 20 Book from at least 1997 to the present, did Red 21 Book rely on Warrick Pharmaceutical to verify the 22 pricing?</p>
Page 287	Page 289
<p>1 Pharmaceuticals to verify the accuracy of Warrick 2 AWP and WAC pricings that were published in the 3 Red Book? 4 MS. TORGERSON: Objection, form. 5 Objection, leading. Mischaracterizes the 6 document, mischaracterizes the evidence. 7 A. Yes. 8 Q. And I draw your attention to the fact 9 that there is a signature at the bottom of each 10 page. 11 Does that signature indicate that 12 Warrick -- indicate to Red Book that Warrick, in 13 fact, verified the accuracy of AWP and WAC 14 pricing for Warrick products for which pricing 15 was published in the Red Book? 16 MS. TORGERSON: Objection, form. 17 Objection, leading. Mischaracterizes the 18 document, mischaracterizes the evidence, and 19 assumes facts not in evidence. 20 A. Yes. 21 Q. And to the extent a change was 22 requested by Warrick, did Red Book in fact make</p>	<p>1 MS. TORGERSON: Objection, form. 2 Objection, leading. Assumes facts not in 3 evidence and calls for speculation. 4 A. Yes. 5 MR. CARROLL: Thank you. 6 (October 2, 2001 TAP Pharmaceuticals 7 product listing verification marked Exhibit Minne 8 062 for identification.) 9 Q. Miss Minne, what I've handed you as 10 Exhibit 62 is a Red Book product listing 11 verification with a stamped date of October 2nd, 12 2001 to TAP Pharmaceuticals. 13 Are you familiar with Exhibit 62? 14 A. Yes, in that it's a form supplied by 15 Red Book. 16 Q. And was this a document that Red Book 17 routinely used in the ordinary course of its 18 business? 19 MS. CITERA: Object to the form. 20 A. Yes. 21 Q. Did Red Book in fact provide the 22 product listing verification to TAP</p>

73 (Pages 286 to 289)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 290	Page 292
<p>1 Pharmaceuticals to verify the accuracy of TAP 2 Pharmaceuticals' AWP and WAC pricing for its 3 products? 4 MS. CITERA: Objection, form. 5 A. Yes. 6 Q. If you'll notice, there's a signature 7 on the page, on the bottom of each page. 8 Does that signature indicate to Red 9 Book that TAP Pharmaceutical in fact verified the 10 accuracy of the AWP and WAC pricing for TAP 11 Pharmaceutical products that were published in 12 the Red Book? 13 MS. CITERA: Objection, form. 14 A. Yes. 15 Q. And in the ordinary course of its 16 business did Red Book rely on TAP Pharmaceuticals 17 to verify the accuracy of AWP and WAC pricing for 18 all TAP products that were published in the Red 19 Book? 20 MS. CITERA: Object to form. 21 A. Yes. 22 Q. And to the extent a price for a TAP</p>	<p>1 verify the accuracy of King AWP and WAC pricing 2 for drugs for which pricing was published in the 3 Red Book for King -- 4 MR. CARROLL: Strike that. That was a 5 terrible question. I said it so many times. 6 Q. Did Red Book provide this product 7 listing verification form to King Pharmaceuticals 8 to verify the accuracy of King AWP and WAC 9 pricing that was published in the Red Book? 10 MR. FARQUHAR: Objection, leading. 11 A. Yes. 12 Q. And you'll see that at the bottom of 13 each page there is a signature. 14 Does this signature at the bottom of 15 each page indicate to you that King 16 Pharmaceuticals in fact verified the accuracy of 17 the AWP and WAC pricing for King Pharmaceutical 18 drugs that were published in the Red Book? 19 MR. FARQUHAR: Objection, leading. 20 Objection, lack of foundation. 21 A. Yes. 22 Q. And did Red Book in the ordinary</p>
Page 291	Page 293
<p>1 Pharmaceutical product was published in the Red 2 Book from at least 1997 to the present, did Red 3 Book rely on TAP Pharmaceuticals to verify the 4 accuracy of that pricing? 5 MS. CITERA: Object to the form. 6 A. Yes. 7 (September 24, 1999 King 8 Pharmaceuticals product listing verification 9 marked Exhibit Minne 063 for identification.) 10 Q. Miss Minne, what I've handed you as 11 Exhibit 63 is a Red Book product listing 12 verification form dated September 24th, 1999 to 13 King Pharmaceuticals. 14 Are you familiar with Exhibit 63? 15 A. Yes. 16 Q. Is this a document that Red Book 17 routinely used in the ordinary course of its 18 business? 19 MR. GASTWIRTH: Objection to form. 20 A. Yes. 21 Q. Did Red Book provide this product 22 listing verification to King Pharmaceuticals to</p>	<p>1 course of its business rely on King 2 Pharmaceuticals to verify the accuracy of AWP and 3 WAC pricing for King Pharmaceutical products that 4 were published in the Red Book? 5 MR. FARQUHAR: Same objections. 6 A. Yes. 7 Q. And to the extent a price for a King 8 Pharmaceutical drug was published in the Red Book 9 from at least 1997 to the present, did Red Book 10 rely on King Pharmaceuticals to verify the 11 accuracy of the pricing? 12 MR. FARQUHAR: Same objections. 13 A. Yes. 14 MR. CARROLL: That's all I have for 15 that one. 16 (July 25, 2003 Monarch Pharmaceuticals 17 product listing verification marked Exhibit Minne 18 064 for identification.) 19 Q. Now, Miss Minne, what I've handed you 20 as Exhibit 64 is a Red Book product listing 21 verification dated July 25th, 2003 to Monarch 22 Pharmaceuticals.</p>

74 (Pages 290 to 293)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 294	Page 296
<p>1 Are you familiar with Exhibit 64?</p> <p>2 A. Yes.</p> <p>3 Q. Is this a document that was routinely</p> <p>4 used in the ordinary course of its business, of</p> <p>5 Red Book's business?</p> <p>6 A. Yes.</p> <p>7 Q. Did Red Book provide this product</p> <p>8 listing verification to Monarch Pharmaceuticals</p> <p>9 to verify the accuracy of Monarch AWP and WAC</p> <p>10 pricing that was published in the Red Book?</p> <p>11 MR. FARQUHAR: Objection, leading.</p> <p>12 A. Yes.</p> <p>13 Q. I draw your attention to the fact that</p> <p>14 each page of Exhibit 64 is signed with a date</p> <p>15 September 24th, 2003.</p> <p>16 Does this signature, in fact, indicate</p> <p>17 that Monarch verified the accuracy of AWP and WAC</p> <p>18 pricing for Monarch products for which pricing</p> <p>19 was published in the Red Book?</p> <p>20 MR. FARQUHAR: Objection, leading.</p> <p>21 Objection, lack of foundation.</p> <p>22 A. Yes.</p>	<p>1 July 6, 2004 to Ivax Pharmaceuticals.</p> <p>2 Are you familiar with Exhibit 65?</p> <p>3 A. Yes.</p> <p>4 MR. PARISH: Objection to form.</p> <p>5 Q. Is this a document that Red Book</p> <p>6 routinely used in the course of its business?</p> <p>7 MR. PARISH: Object to form.</p> <p>8 MR. CAHILL: Jim, could you just check</p> <p>9 the pages again, 65.</p> <p>10 MR. CARROLL: Oh, you know...</p> <p>11 I see what you're saying. It's a</p> <p>12 copying issue.</p> <p>13 MS. ROSENSTOCK: Do you have a complete</p> <p>14 document?</p> <p>15 MR. CARROLL: I do not. Not here.</p> <p>16 I'll note for the record that Exhibit</p> <p>17 65 is Bates number Red Book 09294 -- whoa.</p> <p>18 Let's -- can we just -- why don't we</p> <p>19 withdraw this, it's the wrong exhibit, I</p> <p>20 apologize. Or we could take it...</p> <p>21 I could take it back.</p> <p>22 MR. PARISH: Are you withdrawing the</p>
Page 295	Page 297
<p>1 Q. In the ordinary course of its</p> <p>2 business, did Red Book rely on Monarch</p> <p>3 Pharmaceuticals to verify the accuracy of AWP and</p> <p>4 WAC pricing for Monarch products that was</p> <p>5 published in the Red Book?</p> <p>6 MR. FARQUHAR: Same objections.</p> <p>7 A. Yes.</p> <p>8 Q. Is it fair to say --</p> <p>9 MR. CARROLL: Strike that.</p> <p>10 Q. If a price for a Monarch</p> <p>11 Pharmaceutical product was published in the Red</p> <p>12 Book from at least 1997 to the present, did Red</p> <p>13 Book rely on Monarch Pharmaceuticals to verify</p> <p>14 the accuracy of that pricing?</p> <p>15 MR. FARQUHAR: Same objections.</p> <p>16 A. Yes.</p> <p>17 (July 6, 2004 Ivax Pharmaceuticals</p> <p>18 product listing verification marked Exhibit Minne</p> <p>19 065 for identification.)</p> <p>20 Q. Miss Minne, what I've handed you,</p> <p>21 what's been marked as Exhibit 65, is a Red Book</p> <p>22 product listing verification for July 6 -- dated</p>	<p>1 exhibit?</p> <p>2 MR. CARROLL: Yes. I apologize for</p> <p>3 that.</p> <p>4 (Exhibit 065 withdrawn)</p> <p>5 (Document marked Exhibit Minne 066 for</p> <p>6 identification.)</p> <p>7 Q. Miss Minne --</p> <p>8 MR. PAUL: Could we go off the record</p> <p>9 just for a second?</p> <p>10 THE VIDEOGRAPHER: This is the</p> <p>11 videographer.</p> <p>12 Off the record at 15:55.</p> <p>13 (Pause)</p> <p>14 THE VIDEOGRAPHER: Back on the record,</p> <p>15 15:56.</p> <p>16 BY MR. CARROLL:</p> <p>17 Q. Miss Minne, what has been handed to</p> <p>18 you as Exhibit 66 --</p> <p>19 MR. LONERGAN: This is Exhibit 65.</p> <p>20 Whatever you want to do.</p> <p>21 Why don't we do a new 65? Is that okay</p> <p>22 with you?</p>

75 (Pages 294 to 297)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 298	Page 300
<p>1 MR. CAHILL: Sure.</p> <p>2 (Document bearing Bates Nos. Red Book</p> <p>3 11649 through 11673 marked Exhibit Minne 065 for</p> <p>4 identification.)</p> <p>5 Q. Miss Minne, what I've handed to you as</p> <p>6 Exhibit 65 is a Red Book product listing</p> <p>7 verification dated November 1st -- stamped dated</p> <p>8 November 1st, 2000 to Novartis Pharmaceuticals.</p> <p>9 Are you familiar with Exhibit 65?</p> <p>10 MR. LONERGAN: I object to the use of</p> <p>11 this document to the extent it's not a complete</p> <p>12 document as produced by Red Book. I don't know</p> <p>13 if it is.</p> <p>14 MR. CARROLL: I would state for the</p> <p>15 record that it is -- contains Bates Red Book</p> <p>16 11649 through 11673, and states at the top that</p> <p>17 it is page 1 through 22.</p> <p>18 Q. Could you please review the document</p> <p>19 to see if it, in fact, is a complete document.</p> <p>20 (Pause)</p> <p>21 A. It is a complete product listing</p> <p>22 verification. It does not contain any cover</p>	<p>1 indicate that Novartis in fact verified the</p> <p>2 accuracy of the AWP and WAC pricing for Novartis</p> <p>3 products for which a pricing was published in Red</p> <p>4 Book?</p> <p>5 MR. LONERGAN: Objection to form, lack</p> <p>6 of foundation.</p> <p>7 A. Yes.</p> <p>8 Q. And did Red Book, in the ordinary</p> <p>9 course of its business, rely on Novartis</p> <p>10 Pharmaceuticals to verify the accuracy of the AWP</p> <p>11 and WAC pricing for Novartis products for which</p> <p>12 pricing was published in the Red Book?</p> <p>13 MR. LONERGAN: Objection to form, lack</p> <p>14 of foundation.</p> <p>15 A. Yes.</p> <p>16 Q. And did it -- and to the extent a</p> <p>17 price for a Novartis product was published in the</p> <p>18 Red Book from at least 1997 to the present, did</p> <p>19 Red Book rely on Novartis to verify the accuracy</p> <p>20 of that pricing?</p> <p>21 MR. LONERGAN: Object to the form, lack</p> <p>22 of foundation.</p>
Page 299	Page 301
<p>1 sheets that we would have sent with it.</p> <p>2 Q. Okay. The cover letter that you</p> <p>3 testified to -- about earlier?</p> <p>4 A. Correct, or the manufacturer</p> <p>5 information form.</p> <p>6 Q. But this is a document that Red Book</p> <p>7 routinely used in the ordinary course of its</p> <p>8 business?</p> <p>9 MR. PARISH: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Did, in fact, Red Book provide this</p> <p>12 product listing verification form to Novartis</p> <p>13 Pharmaceuticals to verify the accuracy of</p> <p>14 Novartis AWP and WAC pricing that was published</p> <p>15 in Red Book?</p> <p>16 MR. LONERGAN: Objection to form.</p> <p>17 A. Yes.</p> <p>18 Q. I draw your attention to review at the</p> <p>19 bottom of each page, you'll see that each page is</p> <p>20 signed by -- it looks like a Michael Conley, on</p> <p>21 October 30th, 2000.</p> <p>22 Does that indicate -- the signature</p>	<p>1 A. Yes.</p> <p>2 (October 24, 2001 ESI Lederle product</p> <p>3 listing verification marked Exhibit Minne 066 for</p> <p>4 identification.)</p> <p>5 Q. Miss Minne, what I've handed you as</p> <p>6 Exhibit 66 is a Red Book product listing</p> <p>7 verification form dated -- stamped dated October</p> <p>8 24, 2001 to ESI Lederle.</p> <p>9 Are you familiar with Exhibit 66?</p> <p>10 A. Yes.</p> <p>11 Q. Is this a product listing verification</p> <p>12 form to which you've been testifying to today?</p> <p>13 A. Yes.</p> <p>14 Q. And is this a document that Red Book</p> <p>15 routinely used in the ordinary course of its</p> <p>16 business?</p> <p>17 A. Yes.</p> <p>18 Q. Did Red Book in fact provide this</p> <p>19 product listing verification form to ESI Lederle</p> <p>20 to verify the accuracy of ESI Lederle AWP and WAC</p> <p>21 pricing for the ESI Lederle products that were</p> <p>22 published in Red Book?</p>

76 (Pages 298 to 301)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 302	Page 304
<p>1 MR. FARQUHAR: Objection, leading.</p> <p>2 A. Yes.</p> <p>3 Q. Did Red Book rely on ESI Lederle to</p> <p>4 verify the accuracy of AWP and WAC pricing for</p> <p>5 ESI Lederle products -- pricing for its products</p> <p>6 published in Red Book?</p> <p>7 MR. FARQUHAR: Objection, leading.</p> <p>8 Objection, lack of foundation.</p> <p>9 A. Yes.</p> <p>10 Q. Do you see the handwriting on Exhibit</p> <p>11 66?</p> <p>12 A. Yes.</p> <p>13 Q. Is that something -- do you recognize</p> <p>14 that handwriting?</p> <p>15 A. I do not.</p> <p>16 Q. Would that handwriting come from</p> <p>17 someone at Red Book or someone at ESI Lederle?</p> <p>18 MR. FARQUHAR: Same objections.</p> <p>19 A. It could be either.</p> <p>20 Q. It could be either.</p> <p>21 To the extent that --</p> <p>22 MR. CARROLL: Strike that.</p>	<p>1 A. Yes.</p> <p>2 Q. And this is a product listing</p> <p>3 verification form that Red Book routinely used in</p> <p>4 the ordinary course of its business?</p> <p>5 MR. LONERGAN: Objection to form.</p> <p>6 Q. Did Red Book provide this product</p> <p>7 listing verification form to Par Pharmaceuticals</p> <p>8 to verify the accuracy of Par AWP and WACs for</p> <p>9 Par products that were published in the Red Book?</p> <p>10 MR. FARQUHAR: Objection, leading.</p> <p>11 A. Yes.</p> <p>12 Q. And I draw your attention to the</p> <p>13 bottom of each page, and you'll -- to see that</p> <p>14 it's in fact signed by a Marissa Caputo.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And does that signature indicate to</p> <p>18 you that, as representative of Red Book, that Par</p> <p>19 Pharmaceuticals in fact verified the accuracy of</p> <p>20 the AWP and WAC pricing for Par products that</p> <p>21 were published in the Red Book?</p> <p>22 MR. FARQUHAR: Objection, leading.</p>
Page 303	Page 305
<p>1 Q. If a price was published for an ESI</p> <p>2 Lederle drug in the Red Book from at least 1997</p> <p>3 to the present, did Red Book in fact rely on ESI</p> <p>4 Lederle to verify the accuracy of that pricing?</p> <p>5 MR. FARQUHAR: Same objections.</p> <p>6 A. Yes.</p> <p>7 (July 25, 2003 Par Pharmaceuticals</p> <p>8 product listing verification marked Exhibit Minne</p> <p>9 067 for identification.)</p> <p>10 Q. Miss Minne, what I've handed you as</p> <p>11 Exhibit 67 is a Red Book product listing</p> <p>12 verification dated July 25th, 2003 to Par</p> <p>13 Pharmaceuticals, Red -- the Bates number is Red</p> <p>14 Book 12343 through 12363. It appears that the</p> <p>15 second digit of the page, at the top right, it</p> <p>16 says "page 1 of," the second digit is cut off,</p> <p>17 but it appears to be 21 pages.</p> <p>18 Can you, please, verify that this is</p> <p>19 the complete document for the record?</p> <p>20 A. I verify it's complete.</p> <p>21 Q. Thank you.</p> <p>22 Are you familiar with Exhibit 67?</p>	<p>1 Objection, lack of foundation.</p> <p>2 A. Yes.</p> <p>3 Q. Did Red Book, in the ordinary course</p> <p>4 of its business, rely on Par Pharmaceuticals to</p> <p>5 verify the accuracy of AWP and WAC pricing for</p> <p>6 all Par products for which pricing was published</p> <p>7 in Red Book?</p> <p>8 MR. FARQUHAR: Same objections.</p> <p>9 A. Yes.</p> <p>10 Q. And if a price for a Par</p> <p>11 Pharmaceutical product was published in the Red</p> <p>12 Book from at least 1997 to the present, did Red</p> <p>13 Book rely on Par Pharmaceutical to verify the</p> <p>14 accuracy of that pricing?</p> <p>15 MR. FARQUHAR: Same objections.</p> <p>16 A. Yes.</p> <p>17 Q. Thank you.</p> <p>18 MR. CARROLL: That's all I have on</p> <p>19 that.</p> <p>20 (December 6, 2005 Amgen USA product</p> <p>21 listing verification marked Exhibit Minne 068 for</p> <p>22 identification.)</p>

77 (Pages 302 to 305)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 306	Page 308
<p>1 MR. CAHILL: Getting near the end?</p> <p>2 MR. CARROLL: Getting near the end.</p> <p>3 Q. Miss Minne, what I've handed you as</p> <p>4 Exhibit 68 is a Red Book product listing</p> <p>5 verification form dated December 6, 2005 to Amgen</p> <p>6 USA.</p> <p>7 Are you familiar with Exhibit 68?</p> <p>8 A. Yes.</p> <p>9 Q. Is this a product listing verification</p> <p>10 form that Red Book routinely used in the ordinary</p> <p>11 course of its business?</p> <p>12 MR. SWEENEY: Object to the form.</p> <p>13 Q. Did Red Book provide this product</p> <p>14 listing verification form to Amgen to verify the</p> <p>15 accuracy of Amgen WACs and AWP that were</p> <p>16 published in the Red Book?</p> <p>17 MR. SWEENEY: Object to the form.</p> <p>18 A. Yes.</p> <p>19 Q. I draw your attention to the bottom of</p> <p>20 each page, and that it is, in fact, signed on</p> <p>21 each page by a Brianette McPolin -- MacPolin.</p> <p>22 Does the signature on the bottom of</p>	<p>1 A. Yes.</p> <p>2 (Document bearing Bates Nos. Red Book</p> <p>3 02938 through 02962 marked Exhibit Minne 069 for</p> <p>4 identification.)</p> <p>5 Q. Miss Minne, what I've handed you that</p> <p>6 has been marked as Exhibit 69 is a Red Book</p> <p>7 product listing verification with a date stamp of</p> <p>8 September 10, 2001, Bates number is Red Book</p> <p>9 02938 through 02962, and it was sent to Astra</p> <p>10 Zeneca.</p> <p>11 Are you familiar with Exhibit 69?</p> <p>12 A. Yes.</p> <p>13 Q. Is this a product -- Red Book product</p> <p>14 listing verification that Red Book routinely used</p> <p>15 in the ordinary course of its business?</p> <p>16 MS. PRINZO: Objection as to form.</p> <p>17 A. Yes.</p> <p>18 Q. Did Red Book in fact provide this</p> <p>19 product listing verification to Astra Zeneca to</p> <p>20 verify the accuracy of Astra Zeneca AWP and WACs</p> <p>21 that were published in the Red Book?</p> <p>22 MS. PRINZO: Objection as to form.</p>
Page 307	Page 309
<p>1 each page indicate that Amgen in fact verified</p> <p>2 the accuracy of the AWP and WAC pricing for --</p> <p>3 MR. SWEENEY: Object to the form.</p> <p>4 Q. -- the Amgen products --</p> <p>5 MR. SWEENEY: Sorry.</p> <p>6 Q. -- published in the Red Book?</p> <p>7 MR. SWEENEY: Object to the form,</p> <p>8 foundation.</p> <p>9 A. Yes.</p> <p>10 Q. Did Red Book in the ordinary course of</p> <p>11 its business rely on Amgen to verify the accuracy</p> <p>12 of AWP and WACs for all Amgen products --</p> <p>13 MR. SWEENEY: Object to the form.</p> <p>14 Q. -- that were published in the Red</p> <p>15 Book?</p> <p>16 A. Yes.</p> <p>17 Q. And if a price for an Amgen product</p> <p>18 was published in the Red Book from at least 1997</p> <p>19 to the present, did Red Book rely on Amgen to</p> <p>20 verify the accuracy of that pricing?</p> <p>21 MR. SWEENEY: Objection, form,</p> <p>22 foundation.</p>	<p>1 A. Yes.</p> <p>2 Q. And if you'll look at the bottom of</p> <p>3 each page, there is a signature.</p> <p>4 Does that signature at the bottom of</p> <p>5 each page indicate that Astra Zeneca in fact is</p> <p>6 verifying the accuracy of AWP and WAC pricing for</p> <p>7 its products that were published in the Red Book?</p> <p>8 MS. PRINZO: Objection as to form.</p> <p>9 A. Yes.</p> <p>10 Q. And to the extent that Astra Zeneca</p> <p>11 asked Red Book to make any corrections or</p> <p>12 changes, did Red Book make those changes?</p> <p>13 MS. PRINZO: Objection as to form.</p> <p>14 A. Yes.</p> <p>15 Q. Did Red Book in the ordinary course of</p> <p>16 its business rely on Astra Zeneca to verify the</p> <p>17 accuracy of AWP and WACs for all Astra Zeneca</p> <p>18 products that were published in the Red Book?</p> <p>19 MS. PRINZO: Objection as to form,</p> <p>20 leading.</p> <p>21 A. Yes.</p> <p>22 Q. And if a price for an Astra Zeneca</p>

78 (Pages 306 to 309)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 310	Page 312
<p>1 product was published in the Red Book from at 2 least 1997 through the present, did Red Book rely 3 on Astra Zeneca to verify the pricing? 4 MS. PRINZO: Objection as to form. 5 A. Yes. 6 (Document bearing Bates Nos. Red Book 7 01802 through 1805 marked Exhibit Minne 070 for 8 identification.) 9 Q. Miss Minne, what I've handed you as 10 Exhibit 70 is a Red Book product listing 11 verification form stamped dated September 1st, 12 1999 to Alpha Therapeutic Corporation, with a 13 Bates stamp Red Book 01802 through 1805. 14 Are you familiar with Exhibit 70? 15 A. Yes. 16 Q. Is this a product listing verification 17 form that Red Book routinely used in the ordinary 18 course of its business? 19 MR. GASTWIRTH: Objection, form. 20 A. Yes. 21 Q. Did Red Book provide this product 22 listing verification form to Alpha Therapeutics</p>	<p>1 Therapeutic product was published in the Red Book 2 from at least 1997 to the present, did Red Book 3 rely on Alpha Therapeutic to verify the accuracy 4 of that pricing? 5 MR. FARQUHAR: Same objections. 6 A. Yes. 7 (Document bearing Bates Nos. Red Book 8 13581 through 13593 marked Exhibit Minne 071 for 9 identification.) 10 Q. Miss Minne, what I've handed you as 11 Exhibit 71 is a Red Book product listing 12 verification with the date July 25th, 2003 to 13 Purepac Pharmaceuticals. The Red -- the Bates 14 stamp is Red Book 13581 through 13593. 15 Are you familiar with Exhibit 71? 16 A. Yes. 17 Q. Is it a product listing verification 18 that Red Book routinely used in the ordinary 19 course of its business? 20 MR. GASTWIRTH: Objection to form. 21 A. Yes. 22 Q. Did Red Book, in fact, send --</p>
Page 311	Page 313
<p>1 to verify the accuracy of Alpha Therapeutics' 2 AWP and WACs that were to be published in the 3 Red Book? 4 MR. FARQUHAR: Objection, leading. 5 A. Yes. 6 Q. You'll notice there is a signature at 7 the bottom of each page of the exhibit. 8 Does that signature indicate that Alpha 9 Therapeutic in fact verified AWP and WAC pricing 10 for Alpha Therapeutic products that were 11 published in the Red Book? 12 MR. FARQUHAR: Objection, leading. 13 Objection, lack of foundation. 14 A. Yes. 15 Q. Did Red Book in the ordinary course of 16 its business rely on Alpha Therapeutic to verify 17 the accuracy of AWP and WAC pricing for all Alpha 18 Therapeutic products that -- for which pricing 19 was published in the Red Book? 20 MR. FARQUHAR: Same objections. 21 A. Yes. 22 Q. And to the extent a price for an Alpha</p>	<p>1 MR. CARROLL: Strike that. 2 Q. Did Red Book provide this product 3 listing verification form to Purepac 4 Pharmaceuticals to verify the accuracy of Purepac 5 AWP and WACs that were to be published in the Red 6 Book? 7 MR. FARQUHAR: Objection, leading. 8 Objection, lack of foundation. 9 A. Yes. 10 Q. I draw your attention to the bottom of 11 each page where there -- this is signed by John 12 Reed. 13 Does the signature in fact indicate 14 that Purepac Pharmaceuticals did verify the 15 accuracy of the AWP and WAC pricing for Purepac 16 drugs that were published in Red Book? 17 MR. FARQUHAR: Same objections. 18 A. Yes. 19 Q. Did Red Book in the ordinary course of 20 its business rely on Purepac Pharmaceuticals to 21 verify the accuracy of AWP and WACs for all 22 Purepac products --</p>

79 (Pages 310 to 313)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 314	Page 316
<p>1 MR. GOBENA: Strike that.</p> <p>2 Q. -- for all Purepac drugs that were</p> <p>3 published in the Red Book?</p> <p>4 MR. FARQUHAR: Same objections.</p> <p>5 A. Yes.</p> <p>6 Q. And if a price for a Purepac</p> <p>7 Pharmaceutical drug was published in the Red Book</p> <p>8 from at least 1997 to the present, did Red Book</p> <p>9 rely on Purepac Pharmaceuticals to verify the</p> <p>10 accuracy of that pricing?</p> <p>11 MR. FARQUHAR: Same objections.</p> <p>12 A. Yes.</p> <p>13 (Document bearing Bates Nos. Red Book</p> <p>14 02073 through 02095 marked Exhibit Minne 072 for</p> <p>15 identification.)</p> <p>16 Q. What I've handed you as Exhibit 72 is</p> <p>17 a Red Book product listing verification with the</p> <p>18 stamped date of October 26, 2000, Bates stamp Red</p> <p>19 Book 02073 through 02095. It was addressed to</p> <p>20 Alphaarma USPD.</p> <p>21 Are you familiar with Exhibit 72?</p> <p>22 A. Yes.</p>	<p>1 verification form be changed, did Red Book make</p> <p>2 that requested change?</p> <p>3 MR. FARQUHAR: Objection -- same</p> <p>4 objections.</p> <p>5 A. Yes.</p> <p>6 Q. Did Red Book, in the ordinary course</p> <p>7 of its business, rely on Alphaarma USPD to verify</p> <p>8 the accuracy of AWP and WAC pricing for all</p> <p>9 Alphaarma drugs that were published in the Red</p> <p>10 Book?</p> <p>11 MR. FARQUHAR: Same objections.</p> <p>12 A. Yes.</p> <p>13 Q. If a price for an Alphaarma drug was</p> <p>14 published in Red Book from at least 1997 to the</p> <p>15 present, did Red Book rely on Alphaarma to verify</p> <p>16 that pricing?</p> <p>17 MR. FARQUHAR: Same objections.</p> <p>18 A. Yes.</p> <p>19 MR. ANDERSON: Are those the last two,</p> <p>20 James?</p> <p>21 MR. CARROLL: I have to take a break</p> <p>22 and check two things.</p>
Page 315	Page 317
<p>1 Q. Is this a product listing verification</p> <p>2 that Red Book routinely used in the ordinary</p> <p>3 course of its business?</p> <p>4 A. Yes.</p> <p>5 Q. Did Red Book provide this product</p> <p>6 listing verification to Alphaarma USPD to verify</p> <p>7 the accuracy of Alphaarma AWP and WACs that were</p> <p>8 published in the Red Book?</p> <p>9 MR. FARQUHAR: Objection, leading.</p> <p>10 A. Yes.</p> <p>11 Q. I draw your attention to the bottom of</p> <p>12 each page, and it indicates that a signature is</p> <p>13 on each page dated October 25th, 2000.</p> <p>14 Does the signature indicate that</p> <p>15 Alphaarma USPD in fact verified the accuracy of</p> <p>16 the AWP and WAC pricing for Alphaarma drugs that</p> <p>17 were published in the Red Book?</p> <p>18 MR. FARQUHAR: Objection, leading.</p> <p>19 Objection, lack of foundation.</p> <p>20 A. Yes.</p> <p>21 Q. To the extent that Alphaarma USPD</p> <p>22 requested that something on the product listing</p>	<p>1 MR. CAHILL: You've got two more?</p> <p>2 MR. CARROLL: Two more, and then I need</p> <p>3 a break to verify, and I may have two more after</p> <p>4 that.</p> <p>5 (Document bearing Bates Nos. Red Book</p> <p>6 10863, 10868, 10876, 10877, 10878 marked</p> <p>7 Exhibit Minne 073 for identification.)</p> <p>8 Q. Miss Minne, what I've handed you as --</p> <p>9 MR. CARROLL: Why don't we go off the</p> <p>10 record.</p> <p>11 THE VIDEOGRAPHER: This is the</p> <p>12 videographer.</p> <p>13 This ends tape number five at 16:24.</p> <p>14 (Recess taken)</p> <p>15 THE VIDEOGRAPHER: This begins tape</p> <p>16 number six at 16:41.</p> <p>17 BY MR. CARROLL:</p> <p>18 Q. Miss Minne, what I've placed in front</p> <p>19 of you as Exhibit 73 are excerpts, they're Red</p> <p>20 Book product listing verifications and they're</p> <p>21 excerpts, and they're all dated July 6, 2004,</p> <p>22 with varying Bates stamps, 10863, 10868, 10876,</p>

80 (Pages 314 to 317)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 318	Page 320
<p>1 10877, and 10878. They're all from the same 2 product listing verification to Mylan 3 Pharmaceuticals. 4 MS. LORENZO: I would just like to note 5 my objection that this is just portions of a 6 32-page document and that the witness does not 7 have the full document to review. 8 Q. And do you agree that this is a 9 six-page -- five-page excerpt from a 32-page 10 document? 11 A. Yes -- 12 MS. LORENZO: Objection. 13 A. Yes, I do. 14 Q. Do you recognize these excerpts? 15 A. Yes. 16 Q. And are these excerpts from a product 17 listing verification that Red Book routinely used 18 in the ordinary course of its business? 19 MS. LORENZO: Objection, form. 20 A. Yes. 21 Q. And did Red Book in fact send these 22 excerpts, in addition to the entire document, to</p>	<p>1 foundation. 2 A. Yes. 3 Q. And if a price for a Mylan 4 pharmaceutical drug was published in the Red Book 5 from at least 1997 to the present, did Red Book 6 rely on Mylan Pharmaceuticals to verify that 7 pricing? 8 MS. LORENZO: Objection, form, 9 foundation, calls for speculation. 10 A. Yes. 11 (Document bearing Bates Nos. Red Book 12 11421, 11432, 11436, 11439 marked Exhibit Minne 13 074 for identification.) 14 Q. Miss Minne, what I've handed you as 15 Exhibit 74 is a Red Book product listing 16 verification excerpts, four-page excerpt from a 17 37-page document, Red Book -- Bates stamp Red 18 Book 11421, 11432, 11436 and 11439. The product 19 listing verification was to UDL Laboratories. 20 Do you recognize Exhibit 74? 21 MS. LORENZO: Objection, form. 22 A. Yes.</p>
Page 319	Page 321
<p>1 Mylan Pharmaceuticals to verify the accuracy of 2 Mylan AWP and WACs that were published in Red 3 Book? 4 MS. LORENZO: Objection, leading, 5 foundation. 6 A. I can assume, yes. 7 Q. Now, if you notice at the bottom of 8 each page, they're all signed by a Connie 9 Hatcher. 10 Do the signatures of Connie Hatcher 11 indicate that Mylan Pharmaceuticals in fact 12 verified the accuracy of AWP and WAC pricing for 13 Mylan drugs that were published in Red Book? 14 MS. LORENZO: Objection, form, 15 foundation. 16 A. Yes. 17 Q. And did Red Book, in the ordinary 18 course of its business, rely on Mylan 19 Pharmaceuticals to verify the accuracy of AWP and 20 WAC pricing for Mylan Pharmaceutical drugs that 21 were published in Red Book? 22 MS. LORENZO: Objection, form,</p>	<p>1 MS. LORENZO: And please note my 2 objection to the fact that this is an incomplete 3 document. 4 Q. Is this the -- are these excerpts the 5 type -- is this product listing verification 6 excerpts the type of document that Red Book 7 routinely used in the ordinary course of its 8 business? 9 MS. LORENZO: Objection, form. 10 A. Yes. 11 Q. And did Red Book provide UDL 12 Laboratories this product listing verification, 13 at least these excerpts, and probably the whole 14 document in its entirety, to UDL Laboratory to 15 verify the accuracy of UDL Laboratory's AWP and 16 WACs to be published in Red Book? 17 MS. LORENZO: Objection, form, 18 foundation. 19 A. Yes. 20 Q. And I draw your attention to the 21 bottom of each page of Exhibit 74, and there are 22 signatures.</p>

81 (Pages 318 to 321)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 322	Page 324
<p>1 Does the signature on the bottom of</p> <p>2 each page indicate to Red Book that UDL</p> <p>3 Laboratories in fact verified the AWP and WAC</p> <p>4 pricing for UDL Laboratory products that were</p> <p>5 published in Red Book?</p> <p>6 MS. LORENZO: Objection, form,</p> <p>7 foundation.</p> <p>8 A. Yes.</p> <p>9 Q. Did Red Book, in the ordinary course</p> <p>10 of its business, rely on UDL Laboratories to</p> <p>11 verify the accuracy of AWP and WACs for all UDL</p> <p>12 Laboratory drugs for which pricing was published</p> <p>13 in the Red Book?</p> <p>14 MS. LORENZO: Objection, form,</p> <p>15 foundation.</p> <p>16 A. Yes.</p> <p>17 Q. And if a price for a UDL Laboratory</p> <p>18 drug was published in Red Book from at least 1997</p> <p>19 to the present, did Red Book rely on UDL</p> <p>20 Laboratories to verify that pricing?</p> <p>21 MR. CAHILL: Objection, form,</p> <p>22 foundation, calls for speculation.</p>	<p>1 MR. CARROLL: Strike that.</p> <p>2 Q. Did Red Book provide a product listing</p> <p>3 verification dated 7/25/2003 to Watson</p> <p>4 Pharmaceuticals to verify the accuracy of Watson</p> <p>5 Pharmaceuticals' AWP and WACs that were</p> <p>6 published in the Red Book?</p> <p>7 MR. FARQUHAR: Objection, leading.</p> <p>8 A. Yes.</p> <p>9 Q. You'll notice that there's a signature</p> <p>10 on the bottom of each page. Does that signature</p> <p>11 indicate that Watson Pharmaceuticals in fact</p> <p>12 verified the AWP and WAC pricing for Watson</p> <p>13 products that were published in the Red Book?</p> <p>14 MR. FARQUHAR: Objection, leading.</p> <p>15 Objection, lack of foundation.</p> <p>16 A. Yes.</p> <p>17 Q. Did Red Book, in the ordinary course</p> <p>18 of its business, rely on Watson Pharmaceuticals</p> <p>19 to verify the accuracy of AWP and WAC pricing for</p> <p>20 Watson products that were published in Red Book?</p> <p>21 MR. FARQUHAR: Same objections.</p> <p>22 A. Yes.</p>
Page 323	Page 325
<p>1 A. Yes.</p> <p>2 (Document bearing Bates Nos. Red Book</p> <p>3 15827, 15838, 15839, 15841 marked Exhibit Minne</p> <p>4 075 for identification.)</p> <p>5 Q. Miss Minne, what I've handed you as</p> <p>6 Exhibit 75 is -- are four pages excerpted from a</p> <p>7 Red Book product listing verification dated July</p> <p>8 25th, 2003, bearing the Bates stamp Red Book</p> <p>9 15827, 15838, 15839 and 15841, sent to Watson</p> <p>10 Pharma.</p> <p>11 Do you recognize Exhibit 75?</p> <p>12 A. Yes.</p> <p>13 Q. And is that a price listing --</p> <p>14 excerpts of a product listing verification</p> <p>15 routinely used in the ordinary course of Red</p> <p>16 Book's business?</p> <p>17 MS. LORENZO: Objection.</p> <p>18 MR. FARQUHAR: I object to the use of</p> <p>19 an incomplete document.</p> <p>20 A. Yes.</p> <p>21 Q. Did Red Book provide these excerpts</p> <p>22 for -- from this -- did --</p>	<p>1 Q. And if a price for a Watson</p> <p>2 Pharmaceutical product was published in the Red</p> <p>3 Book from at least 1997 to the present, did Red</p> <p>4 Book rely on Watson Pharmaceuticals to verify the</p> <p>5 accuracy of that pricing?</p> <p>6 MR. FARQUHAR: Same objections.</p> <p>7 A. Yes.</p> <p>8 (Document bearing Bates Nos. Red Book</p> <p>9 09294, 09302, 09306, 09329 marked Exhibit Minne</p> <p>10 076 for identification.)</p> <p>11 Q. Miss Minne, what I handed you marked</p> <p>12 as Exhibit 76 are excerpts of a product listing</p> <p>13 verification dated July 6, 2004, bearing the</p> <p>14 Bates stamp Red Book 09294, 09302, 09306 and</p> <p>15 09329, to Ivax Pharmaceuticals.</p> <p>16 MR. PARISH: I object on the grounds</p> <p>17 that this is an incomplete document.</p> <p>18 Q. These excerpts are from a 57-page --</p> <p>19 appear to be from a 57-page product listing</p> <p>20 verification.</p> <p>21 Are you familiar with Exhibit 76?</p> <p>22 A. Yes.</p>

82 (Pages 322 to 325)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 326	Page 328
<p>1 Q. And is this a product listing 2 verification used in the ordinary course of Red 3 Book's business? 4 MR. PARISH: Object to the form of the 5 question. 6 A. Yes. 7 Q. Did Red Book provide the product 8 listing verification dated July 6, 2004 to Ivax 9 Pharmaceutical to verify the accuracy of Ivax AWP 10 and WACs that were to be published in Red Book? 11 MR. PARISH: Object to the form of the 12 question. 13 A. Yes. 14 Q. And I draw your attention to the 15 bottom of each page, which indicates they are all 16 signed by a Joyce Jones. 17 Do those signatures indicate that Ivax 18 Pharmaceutical in fact verified the accuracy of 19 AWP and WACs pricing for Ivax drugs for which 20 pricing was published in the Red Book? 21 MR. PARISH: Object to the form of the 22 question. Object to lack of foundation.</p>	<p>1 from at least 1997 to the present, did Red Book 2 rely on Ivax Pharmaceutical to verify that 3 pricing? 4 MR. PARISH: Object to the form of the 5 question. 6 A. Yes. 7 Q. To the extent that there was pricing 8 for Teva Pharmaceutical products published in the 9 Red Book from at least 1997 to the present, did 10 Ivax -- 11 MR. CARROLL: Strike that. 12 Q. -- did Red Book rely on Teva 13 Pharmaceuticals to verify that pricing? 14 MR. PARISH: Object to the form of the 15 question. 16 A. Yes. 17 Q. To the extent there was pricing for 18 Johnson & Johnson drugs that was published in the 19 Red Book from 1997 to the present, did Red Book 20 rely on Johnson & Johnson to verify the accuracy 21 of that pricing? 22 MS. TORGERSON: Objection, form, and</p>
Page 327	Page 329
<p>1 A. Yes. 2 Q. And to the extent that Ivax 3 Pharmaceutical requested that Red Book make a 4 change to the information included on the product 5 listing verifications, did Red Book make that 6 change? 7 MR. PARISH: Object to the form of the 8 question, lack of foundation. 9 A. Yes. 10 Q. Did Red Book, in the ordinary course 11 of its business, rely on Ivax Pharmaceutical to 12 verify the accuracy of AWP and WACs for all Ivax 13 Pharmaceutical drugs that -- for which pricing 14 was published in the Red Book? 15 MR. PARISH: Object to the form of the 16 question. 17 A. Yes. 18 Q. To the extent that a price for Ivax 19 Pharmaceuticals for a -- 20 MR. CARROLL: Strike that. 21 Q. To the extent a price for an Ivax 22 Pharmaceutical drug was published in the Red Book</p>	<p>1 objection, leading. 2 A. Yes. 3 MR. CARROLL: I have no further 4 questions. 5 (Pause) 6 (Document bearing Bates Nos. California 7 Mylan 03471964 through 03472033 marked 8 Exhibit Minne 077 for identification.) 9 EXAMINATION 10 BY MR. PAUL: 11 Q. Miss Minne, I'm Nick Paul. I 12 represent the State of California. We have a 13 case alleging substantially the same allegations 14 that have been described previously by 15 plaintiffs' counsel to you today in California 16 and cross-noticed this deposition, and I'd like 17 to ask you some questions about this document 18 that's been marked as Exhibit 77. Actually, just 19 four pages of it. I know it's been a long day, 20 and I'll try to move quickly. 21 MR. PAUL: For the record, the title 22 page here says "Micromedex Incorporated, Red Book</p>

83 (Pages 326 to 329)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 330	Page 332
<p>1 Database Services, Database Overview Manual," and</p> <p>2 at the bottom right, in small letters it says,</p> <p>3 "Red Book database, revised April 14th, 2000."</p> <p>4 Q. Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Are you familiar with this manual?</p> <p>7 A. Yes.</p> <p>8 Q. Could you describe the purpose of it?</p> <p>9 A. The purpose of this manual is to</p> <p>10 describe the electronic Red Book file to a</p> <p>11 potential customer.</p> <p>12 Q. Is that the same electronic file</p> <p>13 that's been mentioned many times earlier today?</p> <p>14 A. Yes.</p> <p>15 Q. The first two pages I'd like you to</p> <p>16 turn to are --</p> <p>17 MR. PAUL: And for the record, this is</p> <p>18 Bates -- this is Bates number California Mylan</p> <p>19 03471964 through 03472033. I believe it's a</p> <p>20 complete document.</p> <p>21 Q. And I just want to turn to pages 1968</p> <p>22 and 1969, which are in the introduction.</p>	<p>1 MR. PAUL: Strike that.</p> <p>2 Q. So I think earlier today you described</p> <p>3 three purchasers you were aware of of the</p> <p>4 electronic database, Merck MedCo and EDS and</p> <p>5 Express Scripts.</p> <p>6 A. (Nodding)</p> <p>7 Q. Are there any others that come to</p> <p>8 mind?</p> <p>9 A. No. Not at this time.</p> <p>10 Q. What about the fourth bullet, which</p> <p>11 reads, "Establishing and maintaining</p> <p>12 reimbursement levels," do you have any knowledge</p> <p>13 as to how the database is used in that</p> <p>14 connection?</p> <p>15 A. No, I do not.</p> <p>16 Q. All right, if you turn, please, to --</p> <p>17 the last four of the Bates are 2010.</p> <p>18 MR. FARQUHAR: I'm sorry, Counselor,</p> <p>19 could you also read the page number in the upper</p> <p>20 right-hand corner, because I have a different</p> <p>21 version of that? I may be able to refer to it.</p> <p>22 MR. PAUL: Sure. With respect to the</p>
Page 331	Page 333
<p>1 And looking at the bottom of page 1968,</p> <p>2 there's a sentence that I'll read that begins,</p> <p>3 "Similar," it continues, "to other advanced</p> <p>4 information systems, the Red Book database is a</p> <p>5 rapidly evolving knowledge base. Current uses for</p> <p>6 the database include:" and then on the next page,</p> <p>7 1969, there are some bulletized examples, one of</p> <p>8 which, the second one, is "Claims adjudication."</p> <p>9 Do you have any knowledge as to how the</p> <p>10 data in this database are used for claims</p> <p>11 adjudication?</p> <p>12 A. I have a general knowledge.</p> <p>13 Q. Could you tell us what that is?</p> <p>14 A. A -- a company performing claims</p> <p>15 adjudication purchases pricing information, such</p> <p>16 as the Red Book database, and then uses that when</p> <p>17 determining what the claim -- what the claims</p> <p>18 are.</p> <p>19 Q. So to the extent that a company</p> <p>20 purchasing this database for the purposes of</p> <p>21 claims adjudication and relying on the prices in</p> <p>22 the database --</p>	<p>1 previous questions, it was "Introduction 1/2",</p> <p>2 and "Introduction 1/3."</p> <p>3 MR. FARQUHAR: Thank you.</p> <p>4 MR. PAUL: And in connection with my</p> <p>5 questions regarding Bates pages 2010 and 2011,</p> <p>6 the top number reads "Available Fields 4-34" and</p> <p>7 35.</p> <p>8 BY MR. PAUL:</p> <p>9 Q. Page 2010 provides a description of a</p> <p>10 field name described as average wholesale price</p> <p>11 sector. And the description reads, "Provides the</p> <p>12 product's nationally recognized suggested</p> <p>13 wholesale price as determined by surveys of</p> <p>14 manufacturers and wholesalers. The AWP sector</p> <p>15 contains fields for the current, first previous</p> <p>16 and second previous average wholesale prices."</p> <p>17 Did I -- did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And where would the surveys that are</p> <p>20 described in there, how would they take place?</p> <p>21 A. That would be -- going back to the</p> <p>22 product listing verification that we would send</p>

84 (Pages 330 to 333)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 334	Page 336
<p>1 to manufacturers.</p> <p>2 Q. The same product listing verifications</p> <p>3 that were discussed at length today?</p> <p>4 A. Correct.</p> <p>5 Q. So in particular, the AWP data that</p> <p>6 was obtained through those product listing</p> <p>7 verifications would be entered into this</p> <p>8 database?</p> <p>9 A. Correct.</p> <p>10 MR. GASTWIRTH: Objection to form.</p> <p>11 Q. So is it fair to say that the AWP</p> <p>12 which were entered into the Red Book database</p> <p>13 which are the subject of this manual, at least</p> <p>14 until the 2003 AWP policy change, would have come</p> <p>15 from drug manufacturers?</p> <p>16 MR. SWEENEY: Object to the form.</p> <p>17 MS. TORGERSON: Object to the form.</p> <p>18 MR. GASTWIRTH: Object to the form.</p> <p>19 MR. CAHILL: Do you want the question</p> <p>20 read back?</p> <p>21 THE WITNESS: Please.</p> <p>22 (Record read)</p>	<p>1 the first manufacturer was -- or who it was or</p> <p>2 when it was that that became a practice.</p> <p>3 Q. All right.</p> <p>4 Are there any manufacturers, to your</p> <p>5 knowledge, whose prices are not featured in the</p> <p>6 Red Book electronic database?</p> <p>7 A. None that I am aware of.</p> <p>8 Q. I think you confirmed that one of the</p> <p>9 purchasers of the electronic database -- one of</p> <p>10 the subscribers is EDS.</p> <p>11 Do you -- is that correct?</p> <p>12 A. I know they were at one point. I do</p> <p>13 not know if they still are.</p> <p>14 Q. Do you have any knowledge as to the</p> <p>15 type of customers that EDS services?</p> <p>16 A. I do not know.</p> <p>17 Q. And I think you've already been asked</p> <p>18 this once earlier today, but could you confirm</p> <p>19 either way, do you know if any government</p> <p>20 Medicaid programs are purchasers of electronic</p> <p>21 database, the Red Book electronic database?</p> <p>22 A. I do not know.</p>
Page 335	Page 337
<p>1 MS. TORGERSON: Same objections.</p> <p>2 A. Yes, the AWP would have come from the</p> <p>3 manufacturers, or they would have supplied us the</p> <p>4 formula to calculate that AWP.</p> <p>5 Q. And with the proviso you just</p> <p>6 mentioned, you're referring to the AWP policy</p> <p>7 period after 2003?</p> <p>8 MS. TORGERSON: Objection, form.</p> <p>9 A. Prior to 2003. The manufacturers,</p> <p>10 some manufacturers, would not provide an AWP</p> <p>11 price but would provide a formula to calculate an</p> <p>12 AWP.</p> <p>13 Q. All right. And could you tell us --</p> <p>14 if you did tell us today, I missed the inception</p> <p>15 date, but could you tell us approximately when</p> <p>16 this attribute of pricing at which AWP were</p> <p>17 entered based on a markup began?</p> <p>18 MR. GASTWIRTH: Objection, form.</p> <p>19 A. Are you asking when manufacturers</p> <p>20 started supplying us a formula?</p> <p>21 Q. Yes.</p> <p>22 A. I do not know the exact date of when</p>	<p>1 Q. Do you know who in Red Book might know</p> <p>2 the answer to that?</p> <p>3 A. Probably the salespeople, who are more</p> <p>4 familiar with the customers.</p> <p>5 Q. Any names in particular that --</p> <p>6 A. Marc Mussato would be a good person to</p> <p>7 know that answer.</p> <p>8 MR. PAUL: That's all I have, thanks.</p> <p>9 MS. TORGERSON: Any other plaintiffs?</p> <p>10 MR. ANDERSON: Is there any plaintiff</p> <p>11 on the phone who would like to ask questions?</p> <p>12 All right, we're now passing the</p> <p>13 witness to the defense bar.</p> <p>14 MR. FARQUHAR: Why don't we go off the</p> <p>15 record just for a second so we can --</p> <p>16 THE VIDEOGRAPHER: This is the</p> <p>17 videographer. Off the record at 17:03.</p> <p>18 (Pause)</p> <p>19 THE VIDEOGRAPHER: On the record at</p> <p>20 17:05.</p> <p>21 EXAMINATION</p> <p>22 BY MR. FARQUHAR:</p>

85 (Pages 334 to 337)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 338	Page 340
<p>1 Q. Thank you.</p> <p>2 My name is Doug Farquhar, I represent</p> <p>3 Watson Pharmaceuticals in a whole mess of the</p> <p>4 cases that have been cross-noticed here.</p> <p>5 So I'd like to start, actually, with</p> <p>6 Exhibit 77, which you were looking at earlier,</p> <p>7 and I'll ask you to turn back to the page where</p> <p>8 the definition of AWP was included.</p> <p>9 The description there has already been</p> <p>10 read into the record, so I won't reread it, I</p> <p>11 think it was on the Bates number 2010.</p> <p>12 A. (Nodding)</p> <p>13 Q. Okay. And I just wanted to confirm</p> <p>14 that the AWP that was provided by some of the</p> <p>15 manufacturers, as you indicated, was intended to</p> <p>16 be what's listed here; that is, the nationally</p> <p>17 recognized suggested wholesale price; is that</p> <p>18 correct?</p> <p>19 MR. GOBENA: Object to form.</p> <p>20 A. That is my assumption.</p> <p>21 Q. Now, I would ask you to turn -- it's</p> <p>22 probably going to be two pages, to the definition</p>	<p>1 Book editorial policy about what a WAC is, in</p> <p>2 your experience?</p> <p>3 MR. CAHILL: Objection to form.</p> <p>4 MR. CARROLL: Objection to form.</p> <p>5 A. Yes, that is our understanding of what</p> <p>6 a WAC price represents.</p> <p>7 Q. Very good.</p> <p>8 All right, I'd like to have you take a</p> <p>9 look at what I'm going to ask to be marked as</p> <p>10 Exhibit 78.</p> <p>11 (Document bearing Bates No. WATMA</p> <p>12 005202 marked Exhibit Minne 078 for</p> <p>13 identification.)</p> <p>14 MR. FARQUHAR: And for those on the</p> <p>15 phone, or those in this room that don't get a</p> <p>16 copy of it, let me describe this as a letter from</p> <p>17 Red Book dated April 6th, 1995 to Jesse Childs at</p> <p>18 Watson Laboratories. It bears a Bates number</p> <p>19 WATMA 005202.</p> <p>20 Q. Let me start by asking you if you</p> <p>21 recognize this document.</p> <p>22 A. Yes, I have not seen this document</p>
Page 339	Page 341
<p>1 of wholesale acquisition cost.</p> <p>2 Okay. What's the Bates number in the</p> <p>3 bottom right-hand corner? What does it end with?</p> <p>4 211?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. If you would -- well, why don't</p> <p>7 I read it into the record, it would probably be</p> <p>8 easier that way.</p> <p>9 The description for the WAC sector</p> <p>10 says, "Provides manufacturer-quoted list prices</p> <p>11 to wholesale distributors, alternatively referred</p> <p>12 to as 'net wholesale' or 'list price' within the</p> <p>13 pharmaceutical industry. This field may be used</p> <p>14 in lieu of or in conjunction with AWP for product</p> <p>15 comparisons and trend analysis. This field is not</p> <p>16 reflective of bids, rebates, volume purchase</p> <p>17 agreements or other types of exclusive contracts</p> <p>18 which may alter the price charged on an</p> <p>19 account-specific basis."</p> <p>20 Did I read that paragraph accurately?</p> <p>21 A. Yes.</p> <p>22 Q. And is that consistent with the Red</p>	<p>1 before.</p> <p>2 Q. All right. Does this document appear</p> <p>3 to be a letter on Red Book letterhead, based on</p> <p>4 your knowledge and experience at Red Book?</p> <p>5 A. Yes, it does.</p> <p>6 Q. Do you have any reason to believe that</p> <p>7 this was anything other than a letter from Red</p> <p>8 Book on this date to Watson Laboratories?</p> <p>9 A. No.</p> <p>10 Q. It's signed by Beverly, it looks like</p> <p>11 Pfohl, P-f-o-h-l.</p> <p>12 Are you familiar with Miss Pfohl?</p> <p>13 A. I am not.</p> <p>14 Q. Now, the second paragraph, it says,</p> <p>15 "WAC on the Red Book database refers to the</p> <p>16 manufacturer's quoted list price to wholesale</p> <p>17 distributors and does not reflect any deal terms</p> <p>18 or specialized contract pricing."</p> <p>19 Did I read that paragraph correctly?</p> <p>20 A. Yes.</p> <p>21 Q. And is that consistent with your</p> <p>22 understanding of what the Red Book definition is</p>

86 (Pages 338 to 341)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 342	Page 344
<p>1 for WAC?</p> <p>2 MR. GOBENA: Objection to form.</p> <p>3 A. Yes.</p> <p>4 Q. Okay, I'm going to show you now what I</p> <p>5 will ask to have marked as Exhibit No. 79.</p> <p>6 (Document bearing Bates Nos. RB00803</p> <p>7 through 00874 marked Exhibit Minne 079 for</p> <p>8 identification.)</p> <p>9 MR. FARQUHAR: Now, this bears Bates</p> <p>10 numbers RB00803 through 874, but I will note for</p> <p>11 the record it is not a complete document. The</p> <p>12 part of this document that interests me,</p> <p>13 actually, begins on the third page, which is</p> <p>14 Bates numbered 805, but I didn't have the benefit</p> <p>15 of having seen Exhibit 77 when I saw this</p> <p>16 document in the Red Book documents, so I included</p> <p>17 the first two pages because they were sequential</p> <p>18 before 805, and I couldn't understand what 805</p> <p>19 was.</p> <p>20 Q. So I'm going to ask -- actually, ask</p> <p>21 you to ignore the first two pages of this</p> <p>22 document, and look at 805, and ask you is this</p>	<p>1 included of the fields, what is the purpose of</p> <p>2 providing those definitions to the customers?</p> <p>3 A. My assumption would be just because</p> <p>4 these are industry standard terms, so by calling</p> <p>5 them the same term as what it is known in the</p> <p>6 industry, it would make sense to a customer.</p> <p>7 Q. Okay. So they would understand what</p> <p>8 the definitions are --</p> <p>9 A. Correct.</p> <p>10 Q. -- that Red Book is using?</p> <p>11 A. Correct.</p> <p>12 Q. I would just ask you to turn to the</p> <p>13 page that's marked at the bottom 807. It's about</p> <p>14 the fifth page in.</p> <p>15 And it's true, is it not, that the</p> <p>16 table of contents here included a reference to</p> <p>17 average wholesale price, or AWP?</p> <p>18 A. Correct.</p> <p>19 Q. And then on the next page -- I'm</p> <p>20 sorry, at the bottom of that same page -- or not.</p> <p>21 Oh, I'm sorry, up at the top -- thank</p> <p>22 you -- of the same page, wholesale acquisition</p>
Page 343	Page 345
<p>1 basically the same document as Exhibit 77, just</p> <p>2 an earlier iteration of it?</p> <p>3 A. That is what it appears to be to me.</p> <p>4 Q. All right, great.</p> <p>5 And on -- I'm sorry, I can't remember</p> <p>6 if you mentioned this, but who did this document</p> <p>7 go to? Did it go to customers? Was it purely an</p> <p>8 internal document?</p> <p>9 A. If this document, 805, is the same as</p> <p>10 or an earlier revision of Exhibit 77, it would</p> <p>11 have been going to customers or potential</p> <p>12 customers.</p> <p>13 Q. Okay.</p> <p>14 And the purpose of -- can you tell us</p> <p>15 what the purpose of this document was? Why was</p> <p>16 it developed and sent to customers?</p> <p>17 A. This document is describing the fields</p> <p>18 included in the electronic Red Book file, so it</p> <p>19 would just be a source of information for a</p> <p>20 customer or potential customer to know what was</p> <p>21 being offered in that file.</p> <p>22 Q. All right. And where definitions are</p>	<p>1 cost, or WAC sector, there's an indication of</p> <p>2 where you would find information about WAC in</p> <p>3 this table of contents?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 Now, I'd ask you to turn to the very</p> <p>7 last two pages in this exhibit.</p> <p>8 This is the index for the document that</p> <p>9 we've been referring to; correct?</p> <p>10 A. Yes.</p> <p>11 Q. All right.</p> <p>12 And on the next-to-last page, 873,</p> <p>13 again, if someone wanted to look at what the</p> <p>14 average wholesale price was intended to be, all</p> <p>15 they would have to do is turn to the index, look</p> <p>16 it up and see that it is defined on page 4-34?</p> <p>17 MR. GOBENA: Objection to form.</p> <p>18 Q. Is that correct?</p> <p>19 MR. GOBENA: Same objection.</p> <p>20 A. That appears to be correct.</p> <p>21 Q. Same question with regard to WAC, or</p> <p>22 wholesale acquisition cost, on the last page?</p>

87 (Pages 342 to 345)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 346	Page 348
<p>1 MR. GOBENA: Same objection.</p> <p>2 A. That appears to be correct.</p> <p>3 Q. Okay.</p> <p>4 And the definitions that we read from</p> <p>5 Exhibit 77 with regard to AWP and WAC are the</p> <p>6 same on page 853 and 855 as the definitions that</p> <p>7 were in Exhibit 77; correct?</p> <p>8 MR. GOBENA: Objection, form.</p> <p>9 A. That appears to be correct.</p> <p>10 Q. Okay. Thank you.</p> <p>11 I'd like to show you now what's been</p> <p>12 marked, or will be marked, as Exhibit 80.</p> <p>13 (Document bearing Bates No. WATED</p> <p>14 021725 marked Exhibit Minne 080 for</p> <p>15 identification.)</p> <p>16 MR. FARQUHAR: And for the record, I</p> <p>17 will describe this as a document that was</p> <p>18 produced by Watson in electronic form in at least</p> <p>19 Kentucky, and I believe in other states, or will</p> <p>20 be soon, and it bears the Bates number in</p> <p>21 electronic form of WATED 021725. It's a letter</p> <p>22 dated August 23rd, 2000 to Ronnie Lane at Red</p>	<p>1 Q. Now, this letter appears to be a</p> <p>2 letter from Schein to Ronnie Lane dated August</p> <p>3 23rd, 2000.</p> <p>4 Do you have any reason to believe that</p> <p>5 this letter was not, in fact, sent by Schein and</p> <p>6 received by Red Book?</p> <p>7 A. No, I do not.</p> <p>8 Q. You'll notice that the second</p> <p>9 paragraph states, in relevant part -- well, I'm</p> <p>10 sorry, let me start with the first -- first</p> <p>11 paragraph, the last sentence. In talking about</p> <p>12 WAC, it says, "As you are aware, rebates or other</p> <p>13 adjustments which, if granted, may result in an</p> <p>14 effective net price to some purchasers of less</p> <p>15 than the listed WAC."</p> <p>16 Would that description of WAC be</p> <p>17 consistent with your understanding on behalf of</p> <p>18 Red Book of the definition of WAC?</p> <p>19 MR. GOBENA: Objection to form.</p> <p>20 A. The Red Book definition does state</p> <p>21 that WAC does not reflect any rebates or other</p> <p>22 adjustments or contract pricing, so, yes, this</p>
Page 347	Page 349
<p>1 Book.</p> <p>2 Q. Let me start by asking you if you're</p> <p>3 familiar with this document.</p> <p>4 A. No.</p> <p>5 Q. Do you know who Ronnie Lane is?</p> <p>6 A. I did meet Ronnie Lane.</p> <p>7 Q. And she's -- who is she?</p> <p>8 A. She was what they called a data</p> <p>9 analyst on the Red Book side in Montvale.</p> <p>10 Q. So she was in --</p> <p>11 MR. SWEENEY: I'm sorry, can you read</p> <p>12 that back? I didn't hear it.</p> <p>13 MR. FARQUHAR: She was a data analyst</p> <p>14 in Montvale.</p> <p>15 MR. SWEENEY: Okay.</p> <p>16 Q. And she was an employee of Red Book;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Would -- well, let me try that again.</p> <p>20 Would her responsibilities have</p> <p>21 included communicating with drug manufacturers?</p> <p>22 A. Yes.</p>	<p>1 would be consistent with my -- with the Red Book</p> <p>2 understanding of WAC.</p> <p>3 Q. Okay.</p> <p>4 And the second paragraph starts with</p> <p>5 the sentence, "While custom and usage by industry</p> <p>6 and government entities has, for over 20 years,</p> <p>7 designated manufacturer-suggested list prices to</p> <p>8 providers as 'AWP,' several manufacturers have,</p> <p>9 in recent years, come under investigation for</p> <p>10 reporting AWP consistent with this practice."</p> <p>11 My question is whether -- well, my</p> <p>12 first is whether the definition of AWP as</p> <p>13 manufacturer-suggested list prices to providers</p> <p>14 would be consistent with Red Book's definition of</p> <p>15 AWP under its editorial policy?</p> <p>16 MR. GOBENA: Objection to the form.</p> <p>17 A. Yes.</p> <p>18 Q. And my second question is whether Red</p> <p>19 Book did anything with this information that was</p> <p>20 provided to Red Book in this letter on August</p> <p>21 23rd, 2000?</p> <p>22 A. I do not know. Any -- any action or a</p>

88 (Pages 346 to 349)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

New York, NY

Page 350	Page 352
<p>1 response to this letter would be contained within</p> <p>2 the manufacturer files.</p> <p>3 Q. Okay.</p> <p>4 And I assume you can't confirm for us</p> <p>5 that this letter was, in fact, received by Red</p> <p>6 Book?</p> <p>7 A. I cannot confirm that.</p> <p>8 Q. Okay.</p> <p>9 MR. FARQUHAR: I would ask counsel for</p> <p>10 Red Book if they can try and locate a copy of</p> <p>11 this letter from within the files of Red Book.</p> <p>12 MR. CAHILL: We'll take the request</p> <p>13 under advisement.</p> <p>14 MR. FARQUHAR: Thank you.</p> <p>15 Q. All right.</p> <p>16 Are you aware that some manufacturers</p> <p>17 and labelers reported an SWP, or suggested</p> <p>18 wholesale price, in lieu of an AWP, or average</p> <p>19 wholesale price?</p> <p>20 MR. GOBENA: Objection to form.</p> <p>21 A. I have seen manufacturers list prices</p> <p>22 termed something other than AWP, yes.</p>	<p>1 A. I did meet her once.</p> <p>2 Q. And again -- she's an employee of Red</p> <p>3 Book, or was?</p> <p>4 A. She was an employee, yes.</p> <p>5 Q. And as a data specialist, would her</p> <p>6 responsibilities include communicating with drug</p> <p>7 companies?</p> <p>8 A. Yes.</p> <p>9 Q. All right.</p> <p>10 Now, this letter, which I will have</p> <p>11 marked as an exhibit, No. 81, is a cover letter</p> <p>12 that says in the text, "Please see attached</p> <p>13 InfoLert" -- that's I-n-f-o, capital L, e-r-t,</p> <p>14 all one word -- "regarding NDC and SWP changes to</p> <p>15 BAC" -- B-A-C -- "tablets, USP. Please note that</p> <p>16 this product is 'AB' rated. If you have any</p> <p>17 questions, please feel free to call us at," and</p> <p>18 then it gives a phone number.</p> <p>19 Attached is an InfoLert that includes</p> <p>20 two -- well, it's got one, two, three, four --</p> <p>21 five columns, the last two columns say "New SWP"</p> <p>22 and "New WAC" and then it lists the new SWPs and</p>
Page 351	Page 353
<p>1 Q. Okay.</p> <p>2 Including suggested wholesale price, or</p> <p>3 SWP?</p> <p>4 A. Off the top of my head, I don't know</p> <p>5 --</p> <p>6 Q. Okay.</p> <p>7 A. -- if that was a term I've seen</p> <p>8 before.</p> <p>9 Q. All right.</p> <p>10 MR. FARQUHAR: I have a document that I</p> <p>11 don't have extra copies of, but I think it will</p> <p>12 be sufficient for me to describe this document so</p> <p>13 that everybody will understand what it is. If</p> <p>14 anybody objects to that, just let me know and</p> <p>15 we'll stop the deposition and get copies of it.</p> <p>16 It's a letter from Watson Pharma</p> <p>17 Incorporated, it's dated 8/30 of 2000, it's from</p> <p>18 an employee of Watson Pharma to Miss Linda Panke,</p> <p>19 P-a-n-k-e, a data specialist in Montvale for Red</p> <p>20 Book.</p> <p>21 Q. Let me start by asking you, do you</p> <p>22 know who Ms. Panke is?</p>	<p>1 new WACs for two different products.</p> <p>2 MR. FARQUHAR: I'll ask now that we</p> <p>3 mark this as Exhibit No. 81.</p> <p>4 (August 30, 2000 letter from Watson</p> <p>5 Pharma Incorporated to Linda Panke, with</p> <p>6 attachment marked Exhibit Minne 081 for</p> <p>7 identification.)</p> <p>8 MR. CARROLL: Does it have a Bates</p> <p>9 stamp on it, Doug?</p> <p>10 MR. FARQUHAR: It does not.</p> <p>11 MR. CARROLL: Has it been produced?</p> <p>12 MR. FARQUHAR: It's been produced</p> <p>13 electronically. I will try to track down the</p> <p>14 electronic data number.</p> <p>15 Q. Showing you this Exhibit No. 81, do</p> <p>16 you have any reason to believe that that was</p> <p>17 anything other than a document that was actually</p> <p>18 sent by my client to Red Book in the form that's</p> <p>19 presented to you there?</p> <p>20 A. No, I do not.</p> <p>21 MR. GOBENA: Objection, form.</p> <p>22 Q. Okay.</p>

89 (Pages 350 to 353)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

<p style="text-align: right;">Page 354</p> <p>1 A. No.</p> <p>2 Q. And if, in fact, this is the letter as</p> <p>3 it was submitted, that would confirm, would it</p> <p>4 not, that at least some manufacturers reported</p> <p>5 SWP in lieu of AWP to Red Book; correct?</p> <p>6 MR. CAHILL: Objection to form.</p> <p>7 MR. GOBENA: Same objection.</p> <p>8 A. Correct.</p> <p>9 Q. All right.</p> <p>10 And do you know what Red Book's policy</p> <p>11 was when manufacturers reported SWPs? How would</p> <p>12 they handle that information? For example, would</p> <p>13 they take the SWP and put it into the AWP field,</p> <p>14 or would they do something different with the</p> <p>15 SWP?</p> <p>16 A. I am not aware if there was a policy.</p> <p>17 I would assume that in the manufacturer notes for</p> <p>18 Watson there would be a note that would describe</p> <p>19 what SWP -- what is done with an SWP price.</p> <p>20 Q. Okay.</p> <p>21 MR. FARQUHAR: I don't think I have any</p> <p>22 other questions.</p>	<p style="text-align: right;">Page 356</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 KRISTEN MINNE</p> <p>8</p> <p>9</p> <p>10 Signed and subscribed to before me</p> <p>11 this ____ day of _____, 2008.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Notary Public</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 355</p> <p>1 MR. ANDERSON: I would ask that we do</p> <p>2 have a copy of that exhibit made for us to review</p> <p>3 this evening.</p> <p>4 MR. FARQUHAR: Sure, why don't we do</p> <p>5 that right now.</p> <p>6 MR. ANDERSON: And, Doug, it would be</p> <p>7 appreciated, in fact it is a formal request, that</p> <p>8 you track down the CD with the Bates number.</p> <p>9 MR. FARQUHAR: I will try to do that</p> <p>10 right now.</p> <p>11 MR. ANDERSON: Thanks.</p> <p>12 THE VIDEOGRAPHER: This is the</p> <p>13 videographer. This ends our deposition for today</p> <p>14 at 17:24 on November 18th, 2008.</p> <p>15 We're off the record at this time.</p> <p>16 (Time noted: 5:24 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 357</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, HELEN MITCHELL, a Shorthand</p> <p>5 Reporter and Notary Public, do hereby</p> <p>6 certify:</p> <p>7 I reported the proceedings in the</p> <p>8 within-entitled matter, and that the</p> <p>9 within transcript is a true record of</p> <p>10 such proceedings.</p> <p>11 I further certify that I am not</p> <p>12 related, by blood or marriage, to any of</p> <p>13 the parties in this matter and that I am</p> <p>14 in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have</p> <p>17 hereunto set my hand this ____ day</p> <p>18 of _____, 2008.</p> <p>19</p> <p>20 HELEN MITCHELL</p> <p>21</p> <p>22 November 18th, 2008</p>